

BY-LAWS, POLICY AND PROCEDURE

of the

STATE BUILDING COMMISSION

of

TENNESSEE

Revised April 2004

BY-LAWS, POLICY AND PROCEDURE
of the
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of
TENNESSEE

The following by-laws and statements of policy and procedure are consistent with State Building Commission authority and clarify and appropriately reflect policy enactment, present operations, and delegation of responsibility for staff role. Adoption of this compilation should allow more expeditious and efficient handling of projects under the jurisdiction and review of the Commission, and encourage streamlined operating procedures that permit the flow of work to be handled without large increases in manpower.

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BY-LAWS
of the
STATE BUILDING COMMISSION
of
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ARTICLE I
STATE BUILDING COMMISSION

I-1 NAME

The name of the Commission shall be the State Building Commission of Tennessee [T.C.A. 4-15-101, et.seq.]

I-2 AUTHORITY

The Commission and these by-laws are established pursuant to the authority established by Legislative Acts described in the Tennessee Code Annotated 4-15-101 et. seq. and other specific statutory responsibility relevant to the Commission.[T.C.A. 4-15-101, et.seq.]

I-3 PURPOSE OF THE COMMISSION

- A. Improvements to Real Property - The Commission will approve and supervise projects involving improvement to real property funded by public or private funds or both in which the State or a department, institution, or agency thereof has an interest. No contract shall be let for construction and no building shall be constructed until the plans for improvements have been submitted to and approved by the Commission. Exceptions - Department of Transportation highway and road improvements pursuant to Title 54, Chapter 5 of the Tennessee Code. [T.C.A. 4-15-101, et.seq.]
- B. Demolition of Buildings - The Commission will review and approve proposals which involve the demolition of a building situated on State-owned land or on land in which the State has an interest. Exceptions - Department of Transportation, Bureau of Highways for demolition of structures in highway rights-of-way. [T.C.A. 4-15-101, et.seq.]
- C. Acquisition, Disposal, and Lease of Property - The Commission will review and approve acquisition and disposal of interest in real property by the State or a department, institution, or agency thereof, and leases described in TCA 12-2-115(b). Exceptions - Acquisition of interest in real property by the Department of Transportation for highway and road rights-of-way (acquisitions other than right-of-way not excepted); interest in real property acquired by gift or devise for the University of Tennessee and State University and Community College System unless such gift or devise obligates the State to expend State funds for capital improvements or continuing operating expenses; and,

Wildlife Resources Agency leases do not require approval, but are subject to review. [T.C.A. 4-15-101, et.seq.]

- D. Buildings Constructed with Private Funds - The Commission will review and approve proposed leases and other contracts which may involve the use of private funds for proposed construction and which relate to improvements of real property in which the State or a department, institution, or agency thereof has an interest. [T.C.A. 4-15-101, et.seq.]

I-4 ENFORCEMENT OF STATUTES

The Commission shall enforce the provisions of Tennessee Public Buildings Accessibility Act (TCA 68-18-201, et seq). The Commission shall enforce the provisions of the Tennessee Energy Conservation Code (TCA 13-19-101, et seq) in new building construction. [T.C.A. 4-15-101, et.seq.]

I-5 PROMULGATION OF RULES, REGULATIONS, AND STANDARDS

The Commission will promulgate rules, regulations, standards, and procedures to be followed for construction of State buildings and fulfillment of its other responsibilities. [T.C.A. 4-15-101, et.seq.]

ARTICLE II **MEMBERSHIP AND STAFF**

II-1 MEMBERS OF THE COMMISSION

The Commission shall consist of seven (7) ex officio members. The Governor, the Secretary of State, the State Comptroller, the State Treasurer, the Commissioner of Finance and Administration, the Speaker of the Senate, and the Speaker of the House of Representatives. [T.C.A. 4-15-101, et.seq.]

II-2 TERM OF MEMBERS

The terms of members of the Commission shall be co-extensive with their holding of the respective offices entitling them to membership on the Commission. [*Policy & Procedures adopted 1978*]

II-3 VACANCIES

No vacancy on the Commission shall impair the right of a quorum to exercise all rights and perform all the duties of the Commission. [*Policy & Procedures adopted 1978*]

II-4 ADMINISTRATIVE STAFF

The Commission will employ such administrative staff personnel as are necessary to carry out its purpose and charge, who shall be attached to the Department of Finance and Administration for all administrative purposes except the discharge of duties and functions directly required of such personnel by the Commission. An affirmative vote of the majority of permanent members of the Commission shall be required in order to

establish appointments, salary, and wages of Commission employees. [*T.C.A. 4-15-101, et.seq.*] [*Policy & Procedures adopted 1978*]

ARTICLE III **MEETINGS**

III-1 SCHEDULE

- A. The Commission will hold regular meetings on the second Thursday of every month. Called meetings of the Commission may be held at which matters pertaining to the operation and affairs of the Commission, as provided for in the notice to the called meeting, may be given attention and appropriate action taken. Meetings of the Commission may be canceled or rescheduled upon notice. [*SBC Meeting Minutes 1/1/85*]
- B. The standard meeting time and date for the Executive Committee shall be 2:00 p.m. on the second Monday following the regularly scheduled Commission meeting. [*SBC Meeting Minutes 1/1/85*]
- C. The Commission will notify the heads of departments, institutions and agencies of the schedule of regular meeting dates. [*SBC Meeting Minutes 9/13/79*]

III-2 HOW CALLED

Meetings of the Commission may be called by the Chairman, Vice Chairman, the Secretary, or a majority of the members of the Commission at such time and place as those calling the meeting shall fix. Adequate public notice of regular, special, and emergency meetings shall be given. [*Policy & Procedures adopted 1978*].

III-3 ATTENDANCE

Whenever the Commission is requested to act upon a matter for a department, institute or agency, the Commission prefers that the head of that department, institute or agency be present to personally submit the request. Those departments, institutions or agencies which do not have their head in attendance, will, at the option of the Commission, be heard after those which do. [*SBC Meeting Minutes 9/13/79*]

III-4 RULES OF ORDER

Meetings shall be governed by Robert's Rules of Order. [*Policy & Procedures adopted 1978*]

III-5 QUORUM VOTING

At all meetings, a majority of members, being four (4), shall constitute a quorum. A majority vote of the quorum shall constitute the action of the Commission. [*Policy & Procedures adopted 1978*]

III-6 MINUTES

Adequate written minutes shall be kept recording the official acts and proceedings at meetings of the Commission. Minutes will be presented for approval or correction at a subsequent meeting and such approval indicated by signature of the Secretary. *[Policy & Procedures adopted 1978]*

ARTICLE IV **OFFICERS**

IV-1 CHAIRMAN

The Governor of the State shall serve as Chairman. The Chairman shall be the Chief Executive Officer of the Commission and shall have the general and active management of the Commission's business and shall exercise general supervision and direction over all of the affairs of the Commission. The Chairman may affix his signature to contracts or documents required to implement actions of the Commission. *[T.C.A. 4-15-101, et.seq.][Policy & Procedures adopted 1978]*

IV-2 VICE-CHAIRMAN

The Commission shall elect a Vice-Chairman from its membership. The Vice-Chairman shall, in the absence or disability of the Chairman, perform the duties and exercise the powers of the Chairman. *[T.C.A. 4-15-101, et.seq.][Policy & Procedures adopted 1978]*

IV-3 SECRETARY

The Commission shall elect a Secretary from its membership. The Secretary shall be responsible for minutes and records of the Commission and for giving proper notice of meetings. The Secretary is also responsible for placement of items on the agenda. *[T.C.A. 4-15-101, et.seq.][Policy & Procedures adopted 1978]*

IV-4 STATE ARCHITECT

The State Architect selected and approved by the Commission shall serve as Chief Staff Officer of the Commission and shall serve as the operating manager of the affairs of the Commission, be administratively attached to the Department of Finance and Administration, be responsible for supervision of projects approved by the Commission, and will institute such operating procedures as are required to implement the rules, policy, and procedure, and will promulgate technical standards for and of the Commission. The State Architect shall prepare and maintain, at the discretion of the Secretary, minutes and records of the Commission. *[Policy & Procedures adopted 1978]*

IV-5 DELEGATION OF AUTHORITY OF OFFICERS OF THE COMMISSION

The Commission, for any reason sufficient to it, may delegate its powers, or duties, or any of them, to any member or members or to any officer or officers. *[Policy & Procedures adopted 1978]*

ARTICLE V
EXECUTIVE SUB-COMMITTEE

V-1 MEMBERSHIP AND OFFICERS

The Executive Sub-Committee is composed of the three State Constitutional Officers and the Commissioner of the Department of Finance and Administration. The Executive Sub-Committee shall elect its own officers from among its membership. *[SBC Meeting Minutes 1/11/90]*

V-2 AUTHORITY *[Policy & Procedures adopted 1978] [SBC Meeting Minutes 11/7/85] [SBC Meeting Minutes 1/11/90]*

- A. The Executive Sub-Committee is authorized to act for the full Commission in any matter which has been delegated to the Executive Sub-Committee by the Commission.
- B. The Executive Sub-Committee may approve changes to or adoption of policy and procedure as representative of the full Commission.
- C. The Executive Sub-Committee is delegated authority on behalf of the Commission to take final action on land acquisition, land disposal, and lease transactions where such transactions are consistent with established Commission policies. Actions taken by the Executive Sub-Committee shall be reported to the Commission at its next regularly scheduled meeting.
- D. The Executive Sub-Committee shall receive recommendations for architects, engineers and special consultants from the Commissioner, department head or executive whose project is before the Commission and shall, prior to the submission of the project for approval by the Commission, select and recommend the name of the architect, engineer or special consultant to the Commission for approval in a regular or called session. *[SBC Meeting Minutes 5/14/82]*
- E. Transactions not fully consistent with established Commission policies, and transactions which in the judgment of a member of the Executive Sub-Committee merit consideration of the Commission, shall be submitted to the Commission for consideration.
- F. The Executive Sub-Committee may act on behalf of the Commission in matters relative to demolition; however, a Committee member may require a proposed demolition project be brought before the full Commission for consideration and action. *[SBC Meeting Minutes 4/21/86]*
- G. The Executive Sub-Committee may approve routine funding allocation changes on projects under the jurisdiction of the State Building Commission. *[SBC Meeting Minutes 7-12-90]*

ARTICLE VI
AMENDMENT PROCEDURE

These by-laws may be amended, altered, or repealed upon the affirmative vote of a majority of permanent members of the Commission. The by-laws may not be in conflict with the statutes of the State. *[Policy & Procedures adopted 1978]*

POLICY and PROCEDURE
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2.01 DEFINITION OF A PROJECT REQUIRING APPROVAL OF THE COMMISSION

- A. Any improvement to real property, including the demolition of any building or structure located on real property in which the State of Tennessee or any of its departments, institutions, or agencies has an interest, other than Department of Transportation, highway and road improvements and demolition of structures in highway rights-of-way will require State Building Commission approval. "Improvements to real property" is defined as follows: *[T.C.A. 4-15-101, et.seq.]*
1. The construction or erection of new buildings or structures in which the State of Tennessee or any of its departments, institutions or agencies has an interest whether financed by public or private funds or both; *[T.C.A. 4-15-101, et.seq.]*
 2. The major maintenance of any building or structure in which the State of Tennessee or any of its departments, institutions or agencies has an interest, wherein "major maintenance" is defined as the repair or renovation of any building or structure or any portion thereof in which the State of Tennessee or any of its departments, institutions or agencies has an interest and which is being funded by direct appropriations for major maintenance or which will cost in excess of one hundred thousand dollars (\$100,000); or *[T.C.A. 4-15-101, et.seq.][Policy & Procedures adopted 1978]*
 3. The renovation of any building or structure in which the State of Tennessee or any of its departments, institutions or agencies has an interest, wherein "renovation" means the change in the functional use or operation of space in existing buildings or structures in which the State of Tennessee or any of its departments, institutions or agencies have an interest. *[T.C.A. 4-15-101, et.seq.] [Policy & Procedures adopted 1978]*
- B. The Commission shall also review proposals involving projects situated on land in which the State has an interest and proposed leases or contracts which would involve the use of public, private, or both funds for construction or improvements. *[Policy & Procedures adopted 1978]*
- C. The Commission shall review and approve proposed leases in excess of \$40,000 annual consideration or longer than five (5) years and land acquisition or disposal by any agency, department, or institution of State government, except thus as provided in Article I of its by-laws: *[T.C.A. 4-15-101, et.seq.][SBC Meeting minutes 5/24/90]*

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1. Leases by or to the Wildlife Resources Agency do not require approval unless they are of the type described in TCA 4-15-102(d)(1)(D); however, the Commission will review the exempt leases as a matter of policy.
2. The Department of Transportation's Bureau of Highways is exempt for acquisition of land for highway rights-of-way, and other exceptions provided in TCA 12-2-112.
3. The University of Tennessee and the State University and Community College system are exempted for any interest in real property acquired by gift or devise unless such gift or devise obligates the State to expend State of Tennessee funds for capital improvements or continuing operating expenses.

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3.01 LEGISLATIVE PROJECTS

Projects under the jurisdiction of the legislature shall be approved and recommended by the Senate and House Management Committee prior to submission to the Commission for approval. *[SBC Meeting Minutes of 2/24/83]*

3.02 GENERAL STAGES OF REVIEW

- A. Projects shall be brought before the Commission for review and action at the following stages, except as herein excepted or as specifically excepted by the Commission. *[Policy & Procedures adopted 1978] [SBC Meeting Minutes 9/8/67]*
1. First Stage - Initial approval of budget, scope, land, and funding, and selection of Designer.
 2. Second Stage - Approval of preliminary Bidding Documents (Early Design Phase), including but not limited to Plans and outline Specifications.
 3. Third Stage - Approval of final Bidding Documents, including but not limited to Bidding Requirements, Contract Forms, Conditions, Specifications, and Drawings.
 4. Fourth Stage - Approval of award of contract.
- B. The State Architect shall assist the Commission in the review of projects. After initial approval of scope, budget, land, designer selection, and funding, and after approval of the Early Design Phase of new construction, the Commission delegates to the State Architect the responsibility for approval, coordinating, and monitoring of the project through completion and acceptance (third and fourth stages) as long as the project remains within the approved scope and budget, and funds remain available. *[Policy & Procedures adopted 1978] [SBC Meeting Minutes of 7/20/78]*
- C. The Commission may limit its approval to any phase of a project. *[Policy & Procedures adopted 1978]*
- D. The State Architect shall schedule a project for further review by the Commission when it is believed to be in the interest of the project to have such a review, or whenever it is proposed that budget, scope, or funding be changed from that originally approved. *[Policy & Procedures adopted 1978]*
- E. First Stage approval of a project (sub-paragraph 3.02(A)(1) automatically carries with it, SBC approval of all usual and customary easements, licenses, disposals of utilities, right

of entries, and right of ways necessary for the maintenance and support of utilities for the project. Any such action shall be reported to the full Commission at their next regularly scheduled meeting following the execution of the legal documents reflecting the action taken. [*SBC Minutes 2/14/02*]

3.03 EARLY DESIGN STAGE REVIEW

Departments or agencies shall present to the Commission, in the early stages of development of new projects, sufficient information to describe the project and to identify proposed building systems concepts and estimated costs. This process is referred to as Early Design Phase. [*SBC Meeting Minutes of 7/20/78*]

3.04 PRE-PLANNING PROJECTS

Pre-planning projects shall be approved by the Commission for coordination by the State Architect through the Design Development Phase. At completion of the Design Development Phase, the pre-planning project will be presented to the Commission for review and approval of the project. If the pre-planned project is approved at a given budget, scope, and funding, the State Architect shall be delegated responsibilities as defined in 3.02.B. [*Policy & Procedures adopted 1978*]

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4.01 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGNER

- A. The State Building Commission Form SBC-6 Owner-Designer Agreement revised February 1999 (Attachment 1) is to be used as the Standard Form of Agreement Between Owner and Architect or Engineer. It sets forth the appropriate Basic Services and other provisions for projects. State Building Commission Form SBC-6S Supplement to Owner-Designer Agreement revised February 1999 (Attachment 2) is to be used for the necessary amendments to agreements written on Form SBC-6. A copy of each of these two forms is attached hereto and considered an integral part of these policies and procedures, the same as if transcribed verbatim herein. All new contracts executed after 2/11/99 will utilize the February 1999 SBC-6 contract form. *[Policy & Procedures adopted 1978] [SBC Meeting Minutes of 6/1/78, 6/16/94, 6/13/96, 6/12/97 and 2/11/99]*
- B. A designer (architect or engineer) contract must be signed by the designer, the head of the contracting agency, the State Architect and the availability of funds certified by the Commissioner of Finance and Administration, as required by T.C.A. 9-6-113. In addition, all such contracts over \$50,000 must be approved by signature of the Comptroller of the Treasury. All such contracts over \$100,000 must also be approved by the signature of the Attorney General (as to form and legality). The Tennessee Board of Regents (TBR) and the University of Tennessee System (UT) are exempt from the foregoing requirements of this paragraph. However, it is a requirement of the Commission that all designer contracts for projects under the jurisdiction of the State Building Commission (SBC), and contracted by the TBR or UT be signed as follows:
- 1) Designer
 - 2) Head of the Agency. For the purposes of this policy, Agency is defined as either the Tennessee Board of Regents or The University of Tennessee System.
 - 3) Head of the Facilities Development Office or the head of the Financial Office of the Agency for compliance with statutes, policies and contracting procedures.
 - 4) Head of the Financial office of the Agency for certification of funding.
 - 5) Head of the Legal Office of the Agency as to form and legality.

In addition, the State Architect shall sign the contract or otherwise evidence his or her approval of the contract in writing, for conformance to SBC Policy and Procedures. All supplements to designer contracts must be approved and executed by the same parties

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approving and executing the original contract. *[SBC Meeting Minutes of 5-24-90 and 8-24-95]*

- C. It is the expressed intent of the State Building Commission that review and approval of contracts as herein above provided by the Attorney General shall be for form and legality, and review and approval by the Comptroller shall be to ensure compliance with statutes, policies and procedures. *[SBC Meeting Minutes of 5-24-90]*

4.02 MILITARY NATIONAL GUARD BUREAU DESIGNER AGREEMENTS

The use of a modified federal design agreement for projects of the Department of the Military is acceptable. *[SBC Meeting Minutes of 9/13/79]*

4.03 PROJECTS FUNDED FROM INSURANCE PROCEEDS

For projects funded from insurance proceeds on Owner-Designer contract based upon actual documented costs or the State's standard contract based upon the State's standard fee percentage calculated on actual construction costs is acceptable. *[SBC Meeting Minutes of 2/8/01]*

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5.01 METHOD OF BIDDING

The Commission shall follow the "Competitive Sealed Bid Procedure" as herein described, in order to achieve maximum competition among qualified bidders and to obtain the highest level of quality at the least price for State projects. It is not the intent of the Commission to replace the General Services Department Purchasing Division for the procurements of individual items except as may be required for projects which the State Architect and the Department of Finance and Administration will handle directly or coordinate for institutions, departments and agencies of the State. [*T.C.A. 4-15-101, et.seq.*] [*Policy & Procedures adopted 1978*]

5.02 UNACCEPTABILITY FOR EMPLOYMENT

All bidders will be required to respond "true" or "false" to the following statement: The bidder and/or any of the bidder's employees, agents, independent contractors and/or proposed subcontractors have been convicted of, pled guilty to, or pled no lo contendre to any contract crime involving a public contract. [*SBC Meeting Minutes 2/8/01*]

5.03 MINORITY PARTICIPATION IN STATE BUILDING COMMISSION PROJECTS [*SBC Meeting Minutes 3/10/94 and 1/8/04*]

It is the express desire of the State Building Commission to include an emphasis on diversity in its contractual relationships with contractors for the construction, demolition or renovation of State projects under the jurisdiction of the Commission. The Commission acknowledges that firms who demonstrate and embrace diversity within their programs and policies are assisting the State in achieving its goals in building a more reflective marketplace of the community within this state.

- A. It is a policy of the State Building Commission that the above statement accompany the bidding or proposal documents for State projects under the jurisdiction of the Commission.
- B. It is a requirement of all successful bidders or proposers on projects under the jurisdiction of the State Building Commission that they report to the State the names and amounts of contracts entered into with minority-owned businesses on their contract with the State in order for the State to collect data on such participation.
- C. For projects under the jurisdiction of the State Building Commission which utilize a procurement process for selection of a contractor which involves an evaluation of qualifications

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and experience as well as price, it is the intent of the Commission that such proposal evaluations will recognize the positive qualifications and experience of proposers utilizing minority, women, small and disabled businesses as well as a diverse workforce to meet service needs.

- a) In support of the above it is the intent of the Commission to require proposers or bidders to submit in the qualification section of the procurement document a description of proposers existing programs and procedures encouraging diversity participation.
- b) In addition, proposers are to submit the following:
 - 1) Listing of proposer's current contracts involving diversity participation
 - 2) Estimated dollar amount and percentage of proposed diversity participation in the current procurement
 - 3) Percent of proposer's current employees by ethnicity, sex and disability

5.04 BIDDERS LIST

The State Architect shall maintain a list of appropriate contractors and vendors. *[Policy & Procedures adopted 1978]*

5.05 ALTERNATES *[SBC Meeting Minutes 9/30/83]*

- A. Alternates should be limited to three in number unless the particular situation is deemed to warrant otherwise, as determined by the State Architect.
- B. Alternates shall be additive (in accordance with designer estimate).
- C. Alternates shall be listed in descending order of priority (i.e., Alternate No. 1 has highest priority).
- D. When using alternates as a part of bidding, the owner agency and the State Architect, in consultation with the designer, shall establish a "Target", normally equivalent to the Maximum Allowable Construction Cost less contingency, to serve as a benchmark in the consideration of bids (see Article below).

5.06 DETERMINING TIME AND PLACE FOR RECEIPT AND OPENING OF BIDS

- A. The Commission may permit projects for building construction or improvements located in counties having a population of 600,000 or more to have their bids opened in the county in which the project is located. *[T.C.A. 4-15-101, et.seq.]*

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- B. Normally, bids shall be received and publicly opened and read at a location in: ***[T.C.A. 4-15-101, et.seq. [SBC Meeting Minutes 3/17/86]***
- 1) Johnson City, Washington County, for projects located in Cocke, Carter, Greene, Hancock, Hawkins, Hamblen, Johnson, Sullivan, Unicoi, and Washington Counties.
 - 2) Knoxville, Knox County, for projects located in Anderson, Blount, Campbell, Claiborne, Cumberland, Grainger, Jefferson, Knox, Loudon, Morgan, Roane, Scott, Sevier, and Union Counties.
 - 3) Chattanooga, Hamilton County for projects located in Bledsoe, Bradley, Hamilton, Marion, McMinn, Meigs, Monroe Polk, and Rhea Counties.
 - 4) Nashville, Davidson County for projects in the middle Grand Division of the State.
 - 5) Jackson, Madison County for projects located in Benton, Carroll, Chester, Crockett, Decatur, Dyer, Hardeman, Hardin, Haywood, Henderson, Henry, Gibson, Lake, Madison, McNairy, Obion, and Weakley Counties.
 - 6) Memphis, Shelby County for projects located in Fayette, Lauderdale, Shelby, and Tipton Counties.
- C. For projects that cross the boundaries of Grand Division, bids normally shall be received and publicly opened and read in Nashville, Davidson County.

5.07 ADVERTISEMENT AND INVITATION *[Policy & Procedures adopted 1978]*

- A. Following review and approval of Bidding Documents, the State Architect shall make solicitations for bids publicly known. To this end, the following procedures shall be followed:
1. The State Architect will notify the Designer to proceed to the Bidding Phase of the project.
 2. The State Architect shall provide an Advertisement for Bids or Invitation to Bid for each project bid to the Department of General Services Division of Purchasing, which shall then post such notice on a bid notification board maintained in proximity and similar manner to its other bid solicitations. Projects whose cost is estimated to be less than \$50,000 will be advertised on the Bid Board normally using SBC Form 13A (State Building Commission Form for Bid and Agreement).
 3. The State Architect will furnish necessary information regarding the project to appropriate trade organizations for publication in their respective bulletins when

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appropriate. The State Architect shall require, where appropriate, that plans and specifications be provided to trade microfilm service and to Plan Rooms of appropriate recognized construction trade organizations in the general area.

- B. If the Maximum Allowable Construction Cost exceeds \$50,000, unless specifically exempted by the Commission, an Advertisement for Bids shall be published, normally in a daily newspaper having circulation in the area, if available. The advertisement shall normally run not later than four (4) weeks prior to the bid date and for one (1) day, on a Wednesday, that is not a holiday. The Advertisement shall be an abbreviated Legal Notice, not necessarily as detailed as the Invitation contained in the Bidding Documents, but providing: *[SBC Meeting Minutes 3/12/92]*
1. The name of the project
 2. The date, time and place of the bid opening
 3. The location, availability, and deposit requirements for Bidding Documents
 4. Bonding requirements
 5. Contractor License requirements
- C. The time, date, and place of bid opening may be changed, if the State Architect finds sufficient cause.

5.08 INSTRUCTIONS TO BIDDERS *[Policy & Procedures adopted 1978]*

- A. Pre-Bid Conference - When it is determined to be necessary or desirable, the State Architect may require that a pre-bid conference be held with known bidders to receive questions relating to the Bidding Documents and obtain information as to unclear portions of the Work.
- B. Changes, corrections and clarifications - Unclear or incorrect information will be corrected. Changes shall be provided in appropriate, timely, written fashion to known bidders, not less than two (2) days in advance of the bid opening date, provided the request for interpretation of Bidding Documents shall have been made in writing to the Designer not less than four (4) days prior to the bid opening date.
- C. Bidder's responsibility to be informed - Before submitting a bid, each bidder shall be knowledgeable of current laws, rules, and regulations governing the bid, particularly the State Contractor Licensing and Prevailing Wage laws. Before submitting a bid, each bidder shall have thoroughly familiarized himself with the Bidding and Contract Documents, visited the site of the work, and familiarized himself with conditions existing there. Submittal of a bid shall warrant that the bidder has satisfied these requirements, and failure to fulfill these requirements shall in not relieve the bidder of responsibilities with respect to the bid. Upon discovery of conflicts, discrepancies, or ambiguities concerning Contract Documents or the site, the same shall promptly be brought to the attention of the Designer, who shall issue written clarification to known bidders.

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- D. Substitution and Product Options - Systems and products specified or shown in drawings by name and number of manufacturer shall be so for the purpose of establishing a desired level of appearance and performance. Bidders desiring to use another product or system in lieu thereof, shall be allowed to submit a request for substitution in writing to the Designer for consideration no later than ten (10) days prior to the bid opening date, accompanied by specifications, test data, illustrations, and pictures necessary to establish proof of equality of the system or product. If in the opinion of the Designer, such substitution is substantially equal in every respect to the system or product specified and is entirely satisfactory for use in the project, the Designer will approve such substitution in appropriate, timely, written fashion.
- E. Bid submittal - Bidders shall normally be required to submit sealed bids in an envelope furnished by the Commission through the Designer or the State Architect. Information required by the Contractor Licensing law shall have been provided on the front of the bid envelope or the bid will not be opened. Identification of the Project, the bidder, and the bidder's Plumbing, Electrical, and HVAC subcontractors shall also be provided on the bid envelope, and such named subcontractors shall be used in the capacity listed. ***[SBC Meeting Minutes 5/7/71]*** If a bid is mailed, the outer envelope shall state that the envelope contains a sealed bid, so that the sealed bid is not opened when the mail is opened. It shall be the specific responsibility of the bidder to ensure that its bid is received at the appointed place prior to the announced closing time for the receipt of bids. Late delivery of a bid for any reason, including late delivery by United States mail, shall disqualify the bid. Telegraphic bids will not be considered.
- F. Bid Security - When bid security is required, no bid shall be considered or accepted unless the bid is accompanied by bid security in an amount of not less than five percent (5%) of the bid. The bid security shall be in the form of a certified check drawn on a bank insured by the Federal Deposit Insurance Corporation, or a bid bond, written by a Surety Company licensed to do business in the State and accompanied by appropriate Power of Attorney, in favor of the State.
- G. Modification of Bids prior to deadline - If a bidder desires to modify its bid prior to opening of bids, a written or telegraphic modification order, indicating only the amount of the change and indicating neither the original nor modified total bid, must be received by the person receiving bids on the project prior to the time set for opening of the bids. It shall be the specific responsibility of the bidder to ensure that modifications are received at the appointed place prior to the announced closing time for the receipt of bids.
- H. Withdrawal of Bids prior to deadline - If a bidder desires to withdraw its bid prior to opening of bids, a written request to withdraw must be received by the person receiving bids on the project prior to the time set for opening of the bids. It shall be the specific responsibility of the bidder to ensure that a request to withdraw is received at the appointed place prior to the announced closing time for the receipt of bids.

5.09 OPENING BIDS *[Policy & Procedures adopted 1978]*

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- A. Time, place, and presiding official - Bids shall be received and publicly opened and read, by the State Architect or another representative of the State acting as presiding official, at a previously announced place and time as established by the State Architect.
- B. Receipt of bids - Before opening the bid envelope, the presiding official shall indicate thereon the time and date of receipt, and shall determine if the bid envelope has the proper information required to legally open the envelope. Bids opened because of improper information on the envelope or erroneous information contained within shall be rejected. At the appointed time, the presiding official will declare bidding closed and will verify that all bids meet requirements to be opened. The presiding official shall then immediately proceed to the bid opening.
- C. Alternates - If alternates are solicited as a part of the bid, the presiding official will, at the bid opening, after the time set for receipt of bids, but prior to the opening of bids, read aloud the "Target" amount previously established.
- D. Opening of bids - Unless otherwise indicated, the presiding official will immediately proceed to open the bids and read aloud to the assembled public, stating the following and utilizing an appropriate form to tabulate same:
 - a. Name of bidder
 - b. License number of bidder (when required)
 - c. Subcontractors listed on envelope
 - d. Addenda acknowledgment
 - e. Bid Security type and correctness
 - f. Base bid
 - g. Alternate bids
 - h. Unit prices (only if they might influence determination of low bidder, or if requested by Owner)
 - i. Any other pertinent information

5.10 WITHDRAWAL OF BID FROM CONSIDERATION DUE TO MISTAKE [SBC Meeting Minutes 3/17/86, 12/9/93]

- A. Basis for withdrawal - The Commission may allow a bidder to withdraw its bid from consideration after the bid opening without forfeiture of bid security based upon a claim of bid mistake, provided the bid was submitted in good faith and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment mistake and this clerical error must be actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn.

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- B. Means of requesting withdrawal - A request to withdraw a bid due to a mistake must be made in writing to the Commission via the State Architect, delivered by the bidder in person or post-marked as certified or registered mail not later than 24 hours after the time fixed for receipt and opening of bids.
1. The request to withdraw a bid due to a bid mistake shall acknowledge intent by the bidder to submit his original work papers, documents and materials used in preparation of the bid.
 2. The bidder's work papers shall be delivered by the bidder in person or by registered/certified mail not later than five (5) days (Saturday, Sunday, legal holidays and the bid day excluded) from the date of receipt and opening of bids.
 3. Failure of the bidder to make a withdrawal request as prescribed herein shall constitute a waiver by the bidder of his right to claim any mistake in his bid.
- C. Owner to Proceed with Award - In order not to interrupt the bid process and construction schedule, submission of a request to withdraw will be deemed an acknowledgement by the bidder that he is unwilling to undertake the project pursuant to his bid. Consequently, such bid will be rejected from consideration of award of a contract for the work and withdrawn pursuant to these procedures. The lowest remaining responsive bid submitted by a responsible bidder shall be considered as the apparent low bid.
- D. Censure of bidder from participation in contract - A bidder who is permitted to withdraw a bid shall not supply any material or labor to, or perform any subcontract work for any one to whom a contract is awarded for the work for which the withdrawn bid (not any re-bid) was submitted.
- E. Review Panel
1. There is hereby established a Review Panel, composed of three members and consisting of the State Architect, who shall act as chairman, one representative from the State agency for which the work is planned, and one representative of the general building contracting industry, designated by the chairman.
 2. If a bidder files a request to withdraw his bid without forfeiture of his bid security, the Review Panel shall promptly hold a meeting to consider the disposition of the request. The chairman of the Review Panel shall give to the withdrawing bidder, reasonable notice of the time and place of the meeting. The bidder may appear at the meeting and present additional information in support of the request to withdraw the bid.
 3. The review Panel shall review the facts, information, and data submitted by the bidder in support of the request to withdraw the bid, and after consultation with the Office of the Attorney General, shall provide the Commission, within five (5) days of the meeting, a written statement of its findings and recommendations to

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allow or deny the request for withdrawal of the bid without forfeiture of his bid security.

F. Disposition

1. If the Review Panel finds that the price bid was based upon a mistake of the type described in Paragraph A above, the bidder's withdrawal will be permitted without forfeiture of the bidder's security.
2. If the Review Panel finds that the price bid was based upon a mistake not of the type described in Paragraph A, the Review Panel shall recommend to the State Building Commission the denial of the request to withdraw without forfeiture of bid security. The bidder shall have the right to appear before the Commission and to submit arguments in support of the request for withdrawal. If the Commission then affirms the Panel's recommendation, the bidder's bid security shall be forfeited. The findings and rulings of the Commission shall be final.

5.11 **CONSIDERATION OF BIDS** *[Policy & Procedures adopted 1978]*

- A. The Owner reserves the right to reject bids and to waive formalities related to such rejection.
- B. Evaluation of the bids shall be the responsibility of the State Architect in consultation with the project designer and the head of the department or agency for which the project is being carried out. Criteria for evaluation shall include consideration of the bidder's capability, financial condition, past performance, and other factors relevant to the project.
- C. For projects without alternates, determination of the Low Bidder shall be based on the lowest evaluated Base Bid submitted by a responsible and responsive bidder. For projects that include alternates in the bidding process, determination of the Low Bidder shall be based on the bid submitted by a qualified bidder for the Base Bid plus alternates in order of priority to the extent that the sum of these is within the "Target" as stated just prior to the opening of bids. If the base bid of all bidders exceeds the established bid target at the time of bid, then the low bidder is determined by the lowest base bid submitted by a responsible and responsive bidder irrespective of any alternates, if any, bid. If a determined Low Bidder acts to withdraw the bid due to mistake as permitted above, or refuses or is unable to enter into a contract, that bidder shall be disqualified from consideration, and the remaining bids, if any, re-considered on the same basis. *[SBC Meeting Minutes 9/30/83 and 7/11/02]*
- D. Tie Bids *[SBC Meeting Minutes 4/20/89]*
 1. Definition - A "tie bid" exists when two or more responsive bids submitted by responsible bidders are evaluated as equal and lower than all other bids (if any) for base bid plus alternates (if any) considered in order up to, but not to exceed, the bid target.

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2. Resolution - When a tie bid exists, the following criteria will be added, in order, to the consideration of bids until a successful bidder is determined.
 - a. Preference will be given to an in-state business over an out-of-state business.
 - b. Lot or coin toss will be conducted.

5.12 AWARD OF CONTRACT

- A. Award of contract shall be to the Low Bidder as determined above, but shall not exceed the Maximum Allowable Construction Cost ("MACC"), unless an appropriate revision in funding is approved by the Commission. If there are alternates in consideration, the owner agency, with the approval of the State Architect, may selectively accept or reject alternates as deemed in the best interest of the State, as long as the combination resulting from such selection is not one for which a lower acceptable bid was submitted. *[Policies & Procedures adopted 1978]*
- B. If the lowest evaluated responsive bid submitted by a responsible bidder exceeds the MACC approved by the Commission, then one or a combination of the following actions is required: *[Policies & Procedures adopted 1978]*
 1. The project may be re-bid.
 2. The State Architect will submit projects to the Commission when the "lowest evaluated bid" exceeds the MACC by more than ten percent (10%) with recommendations of action.
 3. A change in scope may be approved by the Commission.
 4. A change in funding may be approved by the Commission.
 5. It may be negotiated to within the approved MACC without a change in scope. Negotiation of a bid is at the prerogative of the Commission. The conditions for negotiation will be determined by the Commission. If the apparent "lowest evaluated bid by a responsive and responsible bidder" does not exceed the MACC by more than ten percent (10%), the State Architect is authorized to negotiate the "lowest evaluated responsive and responsible bidder" to bring the project within the MACC and approved scope.
- C. When the bid is judged to meet Commission requirements and the State Architect and head of the owner agency involved concur in the selection of the bidder, then award may be pursued. *[Policy & Procedures adopted 1978]*
- D. Required signatures to execute a construction contract *[SBC Meeting Minutes 5/24/90 and 8-24-95]*:

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1. All construction contracts must be signed by the contractor, the head of the contracting agency, the State Architect and the availability of funds certified by the Commissioner of Finance and Administration, as required by T.C.A. 9-6-113.
2. In addition, all contracts in excess of \$100,000 must also be approved as to compliance with the statutes, policies and contracting procedures by signature of the Comptroller of the Treasury.
3. All contracts in excess of \$500,000 shall, in addition to the requirements of 1 and 2, be reviewed and approved as to form and legality by signature of the Attorney General.
4. It is the expressed intent of the State Building Commission that review and approval of contracts as hereinabove provided by the Attorney General shall be for form and legality, and review and approval by the Comptroller shall be to ensure compliance with statutes, policies and procedures.
5. The Tennessee Board of Regents and the University of Tennessee System are exempt from the requirements of subparagraphs 1-4 above.
6. It is the policy of the State Building Commission that contracts for construction for projects under the jurisdiction of the State Building Commission and contracted by either the Tennessee Board of Regents or The University of Tennessee System contain the following signatures:
 - a) Contractor
 - b) Head of the Agency. For the purposes of this policy, Agency is defined as either the Tennessee Board of Regents or The University of Tennessee System.
 - c) Head of the Facilities Development Office or head of the Financial Office of the Agency for compliance with statutes, policies and contracting procedures.
 - d) Head of the Financial office of the Agency for certification of funding.
 - e) Head of the Legal Office of the Agency as to form and legality.

In addition, the State Architect shall sign the contract or otherwise evidence his or her approval of the contract in writing, for conformance to SBC Policy and Procedures.

- E. Bond Required - On all contracts for construction in excess of \$100,000, the successful bidder shall be required to furnish a contract bond for one hundred percent (100%) of the contract amount to secure the faithful performance of the contract. No substitutions for the required bond will be allowed. The bond shall be written by a surety company licensed to transact business in Tennessee. The bond shall be in the form prescribed by the State and must be executed on behalf of the surety by an attorney-in-fact who shall

attach power-of-attorney to the bond. The bond shall be signed by a licensed resident agent pursuant to T.C.A. 56-15-108. *[SBC Meeting Minutes 11/10/87, 7/21/97 and 2/12/98]*

5.13 GUIDELINES FOR ACCEPTANCE OF COMPLETED “IN-PLACE” CONSTRUCTION PROJECTS AS GIFTS

The purpose of these guidelines is to establish the conditions precedent for approval by the State Building Commission (SBC) of gift projects that are to be constructed, erected, installed, etc. on land owned or leased by the State, and such gift or gifts are to become the property of the State.

A. Background

Due to the ability of private Donors to utilize volunteer labor, accept materials at reduced or no cost, as well as eliminate some of the administrative costs normally associated with State projects, Donors are able to provide improvements more economically and, in some instances, more quickly than if provided by the State’s delivery system. This ability by the Donor allows the State to receive benefits that would otherwise not be available or would have to be funded from State funding sources to meet the State’s need.

B. Procedure

Pursuant to the SBC’s authority to approve and supervise all projects involving public or private funds in which the State has an interest granted in TCA 4-15-102(a)(1), the following criteria shall apply:

1. The SBC must be presented documentation from the Donee (State governing entity) that the proposed gift will be a needed asset to the State. The State agency will present the funding strategy including source of funds for operations and maintenance of the completed project.
2. The SBC must be presented with documentation from the requesting agency or department that the project cannot be accomplished by competitive processes and the reasons therefor.
3. All plans and specifications must be approved by the SBC in accordance with Item 3 of the State Building Commission Policy & Procedures, relating to project reviews.
4. Donor must assure compliance with all applicable federal, state, and local laws and requirements.
5. The following protections to the State must be provided by the Donor unless waived by the SBC:

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- a) Sufficient protection that the project will be completed and that the State will not be subject to liens or claims by material suppliers or workmen.

For projects valued at \$100,000 or more this protection must be provided in the form of a contract bond executed on the SBC standard contract bond form in an amount of no less than 100% of the estimated value of the project.

- b) Sufficient property insurance if project involves existing State improvements.
- c) Indemnification of the State by the Donor or third party, as determined by the SBC, against damage claims incurred incident to the delivery of the project. For projects in excess of \$100,000 value, this must take the form of liability insurance and workmen's compensation at a level no less than the amount and limits required on general SBC projects.
- d) Sufficient protection against losses due to fire, theft, acts of God, nature, etc. For projects in excess of \$100,000 value, this must take the form of Builders Risk Insurance in amounts no less than that required on general SBC projects. *[SBC Meeting Minutes 4/9/98 and 2/11/99]*

POLICY and PROCEDURE
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of
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6.01 LOCAL BUILDING PERMIT PURCHASE

Local building permits shall normally be purchased on State projects where local building authorities desire to and will sell such building permits. The Commission shall be advised, at the earliest stage possible on any State project, of any conflict between the classification of a proposed State project and local zoning requirements. *[SBC Meeting Minutes 6/5/80]*

6.02 ARRANGEMENT OF OFFICE AREAS

In projects that relate to arrangement of office space, "open office landscaping" shall be initiated as the prime alternative for the layout of office space. If another form of layout is utilized, the reason for rejection of "open office landscaping" shall be documented. Responsibility for evaluation of the layouts is delegated to the State Architect. The Commission recognizes that basing office area design on layouts requiring permanent or inflexible structural changes can result in major non-recoverable expense to the State; however, it also recognizes that use of permanent, demountable, or other types of partitioning may be justified in particular cases. *[Policy & Procedures adopted 1978]*

6.03 ROOFING

A minimum ten-year standard guarantee by the roofing systems company shall be required for new roofing systems of low pitch, commonly referred to as flat roofs; and further, the prime contractor shall be required to execute a standard roof bond, backed by a surety company licensed to do business in the state of Tennessee, for a three year period. Such standard documents shall be developed and approved by the State Architect. *[SBC Meeting Minutes 4/13/84 and 4/11/02]*

6.04 CHANGE ORDERS

- A. A bid alternate cannot be added by change order after award of contract if its addition to the original contract would have constituted a combination for which a lower acceptable bid was submitted. *[SBC Meeting Minutes 11/4/71] [SBC Meeting Minutes 9/30/83] [SBC Meeting Minutes 7-12-90]*
- B. For change orders on State building contracts a maximum of 10% overhead and 5% profit is allowed for a contractor or subcontractor performing work and that an additional 5% is allowed for the general contractor where the sub-contractor does the work. *[SBC Meeting Minutes 8/5/71]*

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DESIGN AND CONSTRUCTION

C. Signature Requirements *[SBC Meeting Minutes 8-24-95]*

- 1) The signatures required to execute a contract change order are as follows:
 - a) Contractor
 - b) Designer
 - c) State Architect or Head of Capital Projects Management, Department of Finance and Administration, or, in the case of Higher Education, the Head of the Agency's Facilities Development Office.
- 2) The availability of funds shall be certified by the Commissioner of Finance as required by TCA 9-6-113 or, in the case of Higher Education, by the Head of the Financial Office of the Agency.
- 3) Change Orders which result in a net aggregate increase or decrease in excess of ten (10%) percent of the original contract sum must be approved, in writing, by the State Architect and shall be reported to the State Building Commission.
- 4) The above provisions will be inserted by the appropriate Agency in the Construction Contract specifying the signatures required for the execution of a construction contract change order.

D. An executed change order which results in a net aggregate increase in excess of ten percent (10%) of the original contract sum shall be reported to the Commission. *[SBC Meeting Minutes 7/12/90]*

6.05 FINAL PAYMENT TO CONTRACTORS

If circumstances warrant, as judged by the State Architect, an appropriate newspaper advertisement will be published prior to final payment made by the State to a contractor on a State project. *[SBC Meeting Minutes 6/30/83]*

6.06 BUILDING PLAQUES

Building plaques shall include the name of the Governor(s), Department head(s), and all State Building Commission members from the date of Building Commission approval of a specific project to the date of completion of the project. *[SBC Meeting Minutes 1/17/57 and 10/14/75]*

6.07 DESIGNER EVALUATION

Upon completion of any State project under the jurisdiction of the Commission for which the State has employed a design consultant, Designer Evaluation Forms SBC-7 and SBC-8 (Attachment 5) shall be completed by appropriate State officials responsible for the administration of the project. At the option of the appropriate State official, evaluation forms may be completed relative to the major consultants of the designer for the project. These forms are to be placed in the project files and copies sent to the State Building Commission Executive Sub-Committee via the State Architect. *[SBC Meeting Minutes 4/8/93]*

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6.08 TENNESSEE EQUITABLE RESTROOM ACT

The State Building Commission endorses the Tennessee Equitable Restroom Act Rules and Regulations promulgated by the Department of Commerce and Insurance and establishes that more water closets shall be provided for women than for men by a minimum ratio of two water closets for women for each water closet for men or for each single use urinal or 20 inches of trough urinal, in accordance with TCA 68-120-501, et. seq. *[SBC Meeting Minutes 12/14/95 and 8/8/96]*

ITEM 7

LEASES OF REAL PROPERTY

POLICY and PROCEDURE of the **STATE BUILDING COMMISSION** of **TENNESSEE**

7.01 ADVERTISABLE LEASES [T.C.A. 12-2-114 and SBC Meeting Minutes 11/7/85]

- A. Leases entered into by the State involving annual contract rental payments of more than eight thousand five hundred dollars (\$8,500), except as set forth in F, shall have been made following an advertisement, a formal proposal, and all other requirements of TCA 12-2-114 as amended. Further, in leases involving eight thousand five hundred dollars (\$8,500) or less annual rent, except as set forth in F and G, Real Property Management, Division of Department of Finance and Administration, shall adopt the procedure of providing public notice of the State's desire to seek space for lease in a given locale through any three (3) or more of the following four (4) methods:
1. A public notice, conspicuously posted, in some part of the courthouse or central government building of that particular county.
 2. A news release distributed to daily and weekly newspapers and broadcast stations in that particular county.
 3. A notice placed in a newspaper of general circulation either daily or weekly, in that particular county.
 4. A letter of notice to members of the legislature, mayors, county executives, etc. in that particular county.
- B. The notice will be publicized at the time a decision is made to lease space. The notice shall allow, at least, two weeks for submitting proposals.
- C. The notices shall explain the State's interest in space, generally describe what type is needed and in what location and shall include the name of the proper lease officer to contact for that particular notice. The statement of need will not request formal written proposals as do the advertisements in accordance with T.C.A. 12-2-114 as amended.
- D. Further, Real Property Management, Division of Department of Finance and Administration, shall maintain a file by county of persons who lease, have leased, have offered to lease, or have expressed interest in leasing property to the State. This file shall be consulted by lease officers as they begin personal contacts to negotiate leases.
- E. Exceptions to this policy must be substantiated in writing by the Commissioner of Finance and Administration and submitted to the Commission for approval, in cases of State leases with an effective date of July 1, 1980, or thereafter.
- F. **EARLY REVIEW OF HIGHER EDUCATION LEASE PROPOSAL ACTIONS**

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LEASES OF REAL PROPERTY

1. It is the policy of the State Building Commission that all proposed leasing actions for real property with consideration more than \$15,000 or a term of more than five (5) years by institutions of Higher Education shall be submitted to the Department of Finance and Administration and the Tennessee Higher Education Commission for review and analysis prior to any action by the institutions of Higher Education to lease real property. *[SBC Meeting Minutes 3/20/89]*
 2. All leases involving a consideration of more than \$50,000 per year or a term of longer than five (5) years, upon approval of the Department of Finance and Administration and the Tennessee Higher Education Commission, shall be presented, with appropriate comment or recommendation, to the State Building Commission Executive Sub-Committee for approval prior to any leasing action. Leases approved during the annual budget review process will not require prior approval of the State Building Commission Executive Sub-Committee.
 3. All leases with a consideration of more than \$15,000 per year and not more than \$50,000 shall be submitted to the Department of Finance and Administration and the Tennessee Higher Education Commission prior to any leasing action but shall not require prior approval of the State Building Commission Executive Sub-Committee. After review and analysis, the Department of Finance and Administration and the Tennessee Higher Education Commission shall provide comments to the requesting agency.
 4. The review and analysis of the lease request by the Department of Finance and Administration and the Tennessee Higher Education Commission may include, but shall not be limited to the gathering of comments from various parties regarding the lease action request; the fund implications, and the appropriateness of the lease action request in lieu of a building construction request through the annual capital budget process.
 5. All leases and lease amendments where the State is the lessee with consideration of more than \$40,000 per year or a term of longer than five (5) years shall require State Building Commission approval, or approval by an authorized sub-committee thereof, in accordance with TCA 12-2-115. Additionally, such leases must be approved by the Attorney General. *[SBC Meeting Minutes 5-24-90]*
 6. This policy shall not supersede previously adopted policies of the State Building Commission regarding leases submitted to the State Building Commission by institutions of Higher Education, November 1985.
 7. It is the expressed intent of the State Building Commission that review and approval of contracts as herein above provided by the Attorney General shall be for form and legality. *[SBC Meeting Minutes 5-24-90]*
- G. Leases requiring the approval of the Commission, pursuant to TCA 12-2-115, including those for institutions of higher education, shall comply with the requirements of the

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Policy regarding Advertisable Leases. When institutions of higher education request Commission approval for their leases, the appropriate documentation of the space needs of the institutions, the persons with financial interest in the leased property, and an analysis of lease proposals should be submitted to Real Property Management, Division of Department of Finance and Administration. Additionally, documentation of advertisement and search for alternate space should be submitted to Real Property Management, Division of Department of Finance and Administration for those leases which require Commission approval.

- H. In the following cases, neither advertisement nor public notice will be required before Real Property Management, Division of Department of Finance and Administration negotiates a lease:
1. The space of facility secured is of such a special nature that competing offers would not be available, and the annual contract rent is less than \$8,500.00. Examples include boat moorings, airport hangars, and specialized storage space for items not generally suited for placement in a general warehouse.
 2. Leases for land, where location or the availability of services or facilities precludes alternate sites, and the annual contract rent is less than \$8,500.00. Examples include lots used for storage of bulk materials such as salt, sand, gravel, etc. needed for highway maintenance, and land leased for hunting rights.
 3. Leases for auditoriums, hearing rooms, conference or related space, where the total rent would not exceed \$8,500.00, and where the term of the lease is less than 30 days and Real Property Management, Division of Department of Finance and Administration feels there is no suitable alternative location. Before approving any lease for temporary space, the Director of Real Property Management, Division of Department of Finance and Administration shall determine that no State-owned space is available.

7.02 LEASES WITH TERMS ONE (1) YEAR OR LESS [SBC Meeting Minutes 11/7/85] [T.C.A. 12-2-114, et. seq.]

- A. State leases for real property shall be entered into following the procedures set forth in Section 12-2-114 and 12-2-115, Tennessee Code Annotated. State leases, requiring Commission approval, entered into without advertisement under the one (1) year or less term exception set forth in Section 12-2-114 will be approved by the Commission only upon a written statement from the Commissioner of Finance and Administration that such short term lease (less than one year) is clearly in the best interest of the State and that Real Property Management, Division of Department of Finance and Administration has so documented the file using one of the following standards:
1. The state agency has need for space for one (1) year or less at which time the agency's needs will either terminate or will be fulfilled through State-owned space.

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2. Unforeseen situation arises making it impractical to advertise. Such situations must be fully explained and documented in the lease file.
 3. A renewal of an existing lease for one (1) year or less which will likely result in substantial monetary savings and is clearly in the best interest of the State. In such case, the lease file must be documented as to the economic advantage by showing the average State lease rate for the specific geographic area and the proposed rate.
- B. It is also the desire of the Commission that Real Property Management, Division of Department of Finance and Administration plan for advertisement of future State leases in accordance with Sections 12-2-114 and 12-2-115, Tennessee Code Annotated.

7.03 LEASE AMENDMENTS [SBC Meeting Minutes 11/7/85]

- A. Amendments to leases originally submitted to and recommended by the Commission shall receive Commission approval prior to execution of such amendments. Further, any amendment to a lease which was not submitted and approved by the Commission because the term was less than five years or the consideration was less than \$40,000, but due to the amendment or the aggregate effect of amendments now exceed those limits, shall be submitted to the Commission for approval prior to the execution of the lease amendment. It is further the policy of the Commission that the Executive Sub-Committee shall have authority to approve such lease amendments and that lease amendments so approved be reported to the State Building Commission at its next regularly scheduled meeting. *[SBC Meeting Minutes 5-24-90]*

7.04 CANCELLATION PROVISION [SBC Meeting Minutes 11/7/85]

- A. State leases entered into pursuant to TCA Sections 12-2-114 and 12-2-115 should contain a provision allowing termination by the State upon written notice of termination to the Lessor 90 days prior to the date when such termination becomes effective. Any deviation from the 90 day cancellation provision shall be noted and reported to the Commission along with written justification for such deviation by the Commissioner of Finance and Administration when Commission approval is required. Those leases not requiring Commission approval shall state the cancellation provision within the information furnished the Commissioner of Finance and Administration who shall have authority to approve the cancellation provision.

7.05 DISPOSAL OF INTEREST IN LAND BY LEASING OF SURPLUS STATE REAL PROPERTY FOR CROP LEASE [SBC Meeting Minutes 9-23-91]

- A. In accordance with TCA 12-2-112(d) the Tennessee Wildlife Resources Agency is responsible for leasing of surplus State real property for crop leases, as well as being responsible for the administration of all crop leases and such leasing and administration shall be through procedures reviewed and approved by the State Building Commission. Crop lease procedures adopted by Tennessee Wildlife Resources Agency that have been approved by the State Building Commission are contained in Attachment 5.

ITEM 7

LEASES OF REAL PROPERTY

7.06 POLICY ON CERTIFICATION OF FUNDS FOR LEASES [SBC Meeting Minutes 11/20/92]

Pursuant to T.C.A. 12-2-115(e), funds for leases of property by any State agency, department, institution or office need not be certified as required by T.C.A. 9-6-113 provided that:

- A. In August of each year, a list of existing leases which will expire during the next fiscal year, except for Higher Education leases, shall be provided to the Budget Office with sufficient information for them to identify the current cost, allotment code and cost center of each expiring lease.
- B. Budget will return the list to Real Property Management with a certification that funds will be available for the expiring leases, so long as there is not more than 10% growth in the total cost of each lease. Any exceptions on the list will be clearly noted. The expiring leases shall then be renewed in accordance with other applicable provisions of law.
- C. In the case of a renewal of an existing lease:
 - 1. If the total cost of the new lease exceeds 110% of the expiring lease cost, a request for certification of funds shall be sent to Budget before the new lease is signed.
 - 2. In the event circumstances indicate an increase of more than 10% is likely, an estimate of the increase shall be sent to Budget for certification prior to advertisement or negotiation for the new lease.
- D. In the case of a new lease not involving an existing lease, a request for certification of funds shall be sent to Budget prior to advertisement for the lease.
- E. When any new lease is fully executed, Budget shall receive notification of the total annual cost and term of the new lease.
- F. For Higher Education leases, the above procedure shall be followed except that the Certification of Funds will be made by:
 - 1. In the case of leases for the Board of Regents, the certification shall be made by its Vice Chancellor of Business and Finance; and
 - 2. In the case of leases for the University of Tennessee, the certification shall be made by its Vice President for Business and Finance.
 - 3. Item E above shall not apply to Higher Education leases.

ITEM 7

LEASES OF REAL PROPERTY

7.07 EVALUATION OF PROPOSALS *[SBC Meeting Minutes 12/14/92, 1/27/93 and 2/11/93]*

A. Evaluation of Lowest Average Annual Effective Cost

1. For the purpose of comparing the cost of proposals for State leases entered into pursuant to TCA Sections 12-2-114 and 12-2-115 the State will evaluate the lease proposal based on the average annual effective cost over the term of the proposed lease using the annual base rent amount proposed and annual cost estimates. Standard cost estimates developed by Finance and Administration and approved by the Commission, will include such items as reconfiguring the current open office work stations; purchasing new open office work stations; cost of moving telephones; cost of moving computers; cost of hiring movers to move existing furniture, fixtures and data. Any other annual cost estimates included will be based upon a specific need or requirement of the agency to be located in the space advertised as documented in writing by Finance and Administration.
2. The standard costs or other annual costs to be used in the evaluation as they relate to the needs of the State at the time proposals are requested will be identified in the Invitation for Lease Proposals. The needs and/or requirements of the State may change after the request for proposals is made, however, the estimates for evaluation purposes will remain the same.
3. Standard cost estimates will be reviewed not less than annually by Finance and Administration and any changes submitted for approval by the Commission.
4. Standard costs estimates will be set out in the Information for Proposers package which is provided to all proposers.

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8.01 GENERAL ACQUISITION AND DISPOSAL [T.C.A. 4-15-101, et.seq and T.C.A. 12-2-112, et.seq. and SBC Meeting Minutes 11/7/85, 11/10/93 and 3/14/96]

- A. Acquisitions and disposals of interest in real property under TCA 4-15-101, et seq, and TCA 12-2-112, et seq., shall be initially submitted to the Executive Sub-Committee. The Department of Finance and Administration, through the Division of Real Property Management, shall have responsibility for ensuring that departments, institutions, and agencies submit recommendations and plans through the Department of Finance and Administration at the "conceptual stage" and prior to obtaining appraisals.
- B. The Executive Sub-Committee shall act in its capacity as set forth in Article V of the Commission by-laws.
- C. The Commission approval granted under Paragraph B above shall be conditioned upon the laws, rules and regulations governing the acquisition and disposal of interests in real property being complied with by the Department of Finance and Administration. Prior to final execution of the acquisition or disposal, the appropriate agreements, including documentation to indicate that all laws, rules and regulations and other contract terms have been complied with, shall be submitted to the Attorney General for approval.
- D. Pursuant to the authority granted under TCA 12-2-112(a)(9) the State Building Commission establishes the maximum limit of \$25,000 under which the Commissioner of Department of Transportation may execute deeds to convey surplus right-of-way property without State Building Commission approval pursuant to TCA 12-2-112(a)(9), contingent upon all current procedures remaining the same, with the transaction being submitted to the Department of Finance and Administration, Real Property Management Division, for the review of the established fair market value.
- E. The Department of Finance and Administration shall make appropriate revisions in its rules and regulations, policies and other documents to implement this policy, which shall be approved by the Commission (see Attachment 6).
- F. Exceptions to or deviations from this policy shall be justified in writing to the Commission by the Commissioner of Finance and Administration. The Commission shall have final approval for such exceptions.
- G. Policy for Surplus Real Property Disposal. The State shall seek consideration for sales in fee based on the fair market value of such property, as determined by appraisals required

by law. Because of the public policy or interest served, monetary consideration may, in special and unique circumstances, be waived or reduced when:

1. The conveyance primarily benefits the State; or
2. The grantee is a local or federal governmental entity designed for the public safety, health and welfare; or
3. Payment of the full fair market value by a local or federal government would not be in the interest of the program benefiting from the conveyance; or
4. The conveyance is to any political subdivisions of the State and the real property (land and/or improvements and related personal property), or interest thereon, owned by the State, has no commercial value, or the estimated cost of continued care and handling would exceed the estimated proceeds from its sale. No commercial value means real property, including related personal property, which has no reasonable prospect of being disposed of at fair market value or more than a nominal consideration.

The disposal agency shall document the factors leading to and the determination justifying disposal by grant of any surplus property under this section and shall retain such documentation in the files of the agency.

In the event of a negotiated sale to a governmental body for a public use purpose, the fair market value may be determined by qualified state employees.

- H. When a disposal under G is approved, the grantee shall pay the costs incident to the disposal, such as the applicable real estate transaction fee imposed by the Commissioner of Finance & Administration and approved by the State Building Commission, and any incidental costs such as dismantling, removal, the cleaning up of the premises, survey, appraisal, etc.
- I.
 1. If any property is conveyed under G, the deed of conveyance shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event that such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the State, revert to the State and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the State Building Commission to be necessary to safeguard the interest of the State.
 2. The Commissioner of Finance & Administration has the responsibility for enforcing compliance with the terms and conditions of transfer and any necessary actions for recapturing such property in accordance with the provisions of this section. Notice to the head of the disposal agency by the Commissioner of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

**8.02 DISPOSAL OF INTERESTS OTHER THAN FEE SIMPLE [SBC Meeting Minutes
11/7/85]**

- A. In the disposal of a leasehold, easement or other less than fee interest in any State-owned real property, it shall be first determined and reported to the Commission that the interest being conveyed will not hamper the future operations of the State.
- B. The State shall seek consideration for such conveyances based on their fair market value, but shall consider lesser consideration or a grant in cases where the conveyance is for a public purpose.
- C. In the case of disposals of interest that benefit a private person, persons or entity, the State shall publicly advertise the availability of the property and receive proposals by interested parties. Where it is not feasible to require public advertisement, the interest may be conveyed to a requesting party for consideration at no less than the fair market value as determined by appraisal, unless otherwise approved by the Commission.
- D. **PROCEDURE**
 - 1. When a department or agency of State government determines a need exists to dispose of easements, rights-of-way, or leases of real property, it shall notify the Department of Finance and Administration, using forms prepared by Real Property Management, Division of Department of Finance and Administration. Such notification shall include adequate information about the nature of the proposed conveyance, interested parties, and the justification of the department or agency for the disposal.
 - 2. Real Property Management, Division of Department of Finance and Administration, shall review the request and determine whether any other State agency has a need for the property. After determining that the disposal is in the State's best interest, the Department of Finance and Administration shall submit a recommendation to the Executive Sub-Committee, which shall have authority to take appropriate action in accordance with the above policy. Said action shall be reported at the next regularly scheduled meeting of the Commission.
 - 3. Qualified State employees may assess the value of leases, easements, and rights-of-way, unless the Executive Sub-Committee determines that either: a) an independent appraiser(s) shall be employed; or, b) some other method shall be utilized to determine consideration.
 - 4. Where advertising is applicable, such advertisement shall be placed once in a newspaper which is local with respect to the property to be disposed of and once in a daily newspaper in the nearest major city, provided that when one of the major cities is the situs, advertisement shall be required once in a daily newspaper. A minimum of two (2) weeks shall be allowed for responses to such advertisement.

8.03. BOUNDARY DISPUTE RESOLUTION *[SBC Meeting Minutes 11/14/02]***A. BOUNDARY DISPUTE CLAIM**

1. Upon discovery of a boundary dispute claim by a Department or Agency of the State of Tennessee, the following procedures are to be followed:
 - a) If a boundary problem is discovered, the State agency having jurisdiction over the disputed property will have a staff real estate professional investigate the problem.
 - b) The Agency's real estate professional will examine all records, deeds, plats and monumentations to determine the extent of the problem.
 - c) Once the problem has been defined, the Agency will contact and work in conjunction with the Department of Finance and Administration's Office of Real Estate Management (REM) to resolve the dispute.
 - d) The Office of Real Estate Management will, with any professional consultant deemed necessary, examine the chain of property title and make a determination of what should be the proper property description. The State agency having jurisdiction over the property and REM will devise a potential solution to the problem. Approval to proceed will be required by both agencies before contacting the affected property owner(s).
 - e) Upon receiving approval, REM will contact all affected property owners and negotiate a boundary line. If there is a significant loss or gain of State property (more than five acres), it will require State Building Commission approval prior to any settlement being reached with affected property owner(s).
 - f) If a property line can be negotiated and a loss or gain of State lands is less than five acres, REM will approve the settlement of the boundary and report the settlement to the State Building Commission at the next scheduled monthly meeting.
 - g) The Attorney General's Office must approve all deeds of correction or boundary line agreements. All boundary line agreements and new boundary plat retracements will be recorded in the county where the property is located. (Note: Deeds of Correction require all original signers to re-sign and should only be used on recent acquisitions.)
 - h) The State agency having jurisdiction over disputed property will pay all surveying, deed preparation and recording fees associated with boundary dispute.

2. Upon discovery of a boundary problem by an outside party, the following procedures are to be followed:
 - a) Once a claim has been made by an adjoining property owner against State land, the State department having jurisdiction over the real estate will have a real estate professional from the department contact the property owner to determine the nature and extent of the claim.
 - b) The Agency representative will document the claim in writing. The property owner must provide legal or credible testimony to support his or her claim. The burden of proof falls on the claiming property owner to provide evidence that the state's boundary is incorrect.
 - c) The Agency's representative will review the landowner's survey, tax map, deed and deed calls, written and oral testimony provided by reputable sources or other qualified sources of evidence.
 - d) The Agency's representative will review the State's boundary by examination of State's deed and deed calls and surrounding properties. He will also review recording information to determine the most recent survey recorded.
 - e) If the Agency determines in its discretion that the claim has possible merit, then the Agency will contact REM who will review all the documentation presented and make any independent investigation deemed necessary.
 - f) REM will conduct an investigation of all the records and testimonies associated with the disputed tract and make a boundary line determination.
 - g) The Agency and REM will attempt to negotiate a boundary agreement with the property owner.
 - h) If it is determined that the State will lose or gain a considerable amount of acreage (more than 5 acres) it must have prior approval by the Agency having jurisdiction over the property, Real Estate Management and the State Building Commission. Any agreements that involve five acres or less can be approved by the Agency and REM and will be reported to the State Building Commission at the next scheduled meeting.
 - i) Once a boundary line agreement has been reached and approved, REM will have prepared a Deed of Correction or a boundary line agreement that will be recorded in the county where the property is located. In settling land disputes, sharing of the surveying, deed preparation and recording fees is encouraged by the requesting agency and the affected property owner. The Agency and the property owner may negotiate the fees before any work is begun.

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**9.01 STATE/LOCAL FUNDING FOR CONSTRUCTION OF NEW ARMORIES [SBC
Meeting Minutes 12/14/88]**

- A. Department of Defense and National Guard Bureau policies require the State to participate in construction projects. It is the policy of the State that local governments participate in the funding of these projects as set forth herein.
- B. The Municipal and/or County government shall acquire and deed to the State in fee simple a site on which the armory is to be constructed. Said site is subject to the minimum standards and approval of the State and National Guard Bureau, and the Municipal and/or County government shall provide title insurance and survey documents pertaining to the site. The Municipal and/or County government shall make all required utility services available at the site boundary at no cost to the State.
- C. The Municipal and/or County government share of the construction cost shall be a lump sum contribution based upon a schedule of Local Government Contributions for Armory Construction (Article 9.02), as approved by the Commission. The Department of the Military, in coordination with Commission staff, shall provide an analysis of armory constructions costs and recommend to the Commission a Schedule of Local Government Contributions for Armory Construction to maintain the level of the local contribution at the percentage of construction cost indicated below (Article 9.02), and shall annually make recommendations to the Commission for revisions to the Schedule to maintain the intended percentage of local contribution.
- D. The Department of the Military has developed a series of complete armory designs with standardized sizing of each facility to allow better cost forecasting. Based on analysis of historical costs of these facilities and on current construction costs, it has been determined that the local government funding share based on the allocation set forth above can be approximated as follows (Article 9.02), and shall be utilized as the local government share until modified by the Commission.

ITEM 9

STATE/LOCAL FUNDING OF ARMORIES

9.02 LOCAL GOVERNMENT CONTRIBUTIONS FOR ARMORY CONSTRUCTION [SBC Meeting Minutes 12/14/88]

A. Intended percentages to be achieved:

CONSTRUCTION COSTS:	PERCENT SHARES OF TOTAL		
	FEDERAL	STATE	LOCAL
Armory, including all fees, testing, etc.	75	12.5	12.5
Site preparation	0	50.0	50.0
Grading, seeding, landscaping	75	12.5	12.5
Paving & security fencing	75	12.5	12.5
Extension of utilities from Armory to property line	75	12.5	12.5
Access roads within property line includes driveways	75	12.5	12.5
Sidewalks within property line	75	12.5	12.5
Flagpole	75	12.5	12.5
Bid advertisement costs	0	50.0	50.0
Other improvements not eligible for Federal funding	0	(as applicable)	(as applicable)

B. Lump Sum contributions to be required of local government:

60 Person Armory	\$150,000
100 Person Armory	\$175,000
200 Person Armory	\$200,000
400 Person Armory	\$225,000
800 Person Armory	\$250,000
1,000 Person Armory	\$275,000

9.03 DISPOSAL OF REPLACED ARMORIES [SBC Meeting Minutes 12/14/88]

A. In conjunction with negotiation of the State-Local Agreement for the proposed construction of a new armory facility, and in consideration of local government contribution, including the site, to the construction of the new armory, the Department of

the Military may offer the vacated and/or replaced facility to local government in accordance with the following:

1. The transfer to local government shall be a grant.
 2. The deed to the property will contain a restriction that any disposal of the property shall be at a price not less than fair market value, and that the disposal by local government shall be strictly in accordance with all applicable laws, regulations, and procedures governing such disposal by the local government.
 3. The transfer to local government shall be made upon vacating of the property by the Department of the Military, and is subject to all applicable laws, regulations, and procedures for the disposal of State real property including approval by the Commission.
- B. In the event vacated and/or replaced armory facilities are not transferred to local government, and such vacated and/or replaced armory facilities are surplus to the Department of the Military, said surplus real property shall become the jurisdiction of the Department of Finance and Administration for disposition pursuant to applicable laws, policies, and procedures for administration and disposal.

9.04 FORM OF AGREEMENT FOR STATE/LOCAL FUNDING [SBC Meeting Minutes 12/14/88]

The form to be used for agreements between the State and local governments for construction of National Guard armories shall be that set forth as "Tennessee State Building Commission Standard Form of State/Local Agreement for Construction of a National Guard Armory", revised January 1989. A copy of this form is attached hereto and considered an integral part of these policies and procedures, the same as if transcribed verbatim herein.

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**10.01 STATE PARTICIPATION FOR CONSTRUCTION OF CHAPELS AT
FACILITIES OF THE DEPARTMENT OF MENTAL HEALTH AND MENTAL
RETARDATION**

The Commission will normally approve 50% matching State funds for local contributions for chapel design and construction up to a maximum State participation per chapel of \$125,000. *[SBC Meeting Minutes 6/1/78]*

**10.02 POLICY REGARDING THE STATE'S FINANCIAL PARTICIPATION IN
CAPITAL PROJECTS WITH GRANTEEES OF DEPARTMENT OF MENTAL
HEALTH AND MENTAL RETARDATION *[SBC Meeting Minutes 1/23/89]***

A. SCOPE

1. It is intended that this policy cover all requests submitted by the Department of Mental Health and Mental Retardation for State Building Commission approval of cooperative programs involving State financial participation with a local government or not-for-profit contract agency (Grantee), in the construction, addition, or renovation of facilities providing services for the mentally ill or the mentally retarded. Such programs are authorized in T.C.A. Section 33-1-202.

B. OBJECTIVES

1. Establish a limit on the maximum financial participation by the State.
2. Establish a threshold for the minimum level of financial participation required of the Grantee making the request.
3. Establish a clear guideline on the ownership of real property involved in or resulting from the completion of a requested project.
4. The responsibility for the continued provision of appropriate services for the mentally ill or mentally retarded should be clearly established.
5. In no instance should the State participate in the funding of capital projects housing subsidiary organizations of the Grantee.

C. TERMS AND CONDITIONS**1. Construction of new, free-standing facility****a. Projects on State-owned land**

- (1) The Grantee must provide at least twenty-five percent (25%) of the funds needed for the project, exclusive of the value of the real property upon which the project will be constructed.
- (2) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project, exclusive of the value of the real property upon which the project will be constructed.
- (3) Title to the property will remain with the State.
- (4) Necessary major maintenance of the facility shall be the responsibility of the State.
- (5) Regular and preventive maintenance of the facility shall be the responsibility of the Grantee.

b. Projects on land provided by the Grantee

- (1) The Grantee must agree to transfer title to the real property to the State, along with a title insurance policy, prior to the project being submitted to the State Building Commission for its consideration.
- (2) The Grantee must provide at least twenty-five percent (25%) of the funds needed for the project, exclusive of the value of the real property upon which the project will be constructed.
- (3) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project, exclusive of the value of the real property upon which the project will be constructed.
- (4) Necessary major maintenance of the facility shall be the responsibility of the State.
- (5) Regular and preventive maintenance of the facility shall be the responsibility of the Grantee.

2. Renovations, Additions, and/or Modifications to Existing Facilities**a. State-owned facilities**

- (1) Grantee must provide at least twenty-five percent (25%) of the funds needed for the project.
- (2) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project.
- (3) Title to the property will remain with the State.
- (4) Major maintenance of these facilities shall be the responsibility of the State.
- (5) Regular and preventive maintenance of the facilities shall be the responsibility of the Grantee.

b. Non State-owned facilities

- (1) Grantee must provide at least twenty-five percent (25%) of the funds needed for the project.
- (2) The maximum financial participation on the part of the State shall not exceed seventy-five percent (75%) of the cost of the project.
- (3) Title to the property will remain with the original owner.
- (4) Where the State does not hold title to the real property, the Grantee will lease the facility to the State for ninety-nine (99) years at the sum of one dollar (\$1.00) per year. If the Grantee does not hold title to the real property, the Grantee shall obtain and deliver to the State, an appropriate long-range renewable lease agreement. Such lease agreements are necessary in the event the Grantee is unable or unwilling to perform under the provisions of this policy or the operating contract with the Department of Mental Health and Mental Retardation.
- (5) All necessary maintenance of the facility shall be the responsibility of the Grantee.

D. FACILITY UTILIZATION

1. It is intended that projects approved in accordance with the provisions of this policy, shall be used solely for the purposes of conducting and providing services approved and supported by the Department of Mental Health and Mental

Retardation. It is further intended that no capital project approved in accordance with this policy shall house or be used for the provision of services by any subsidiary organization of the Grantee. The Grantee requesting State financial participation shall certify, in a manner prescribed by the Department of Mental Health and Mental Retardation and acceptable to the State Building Commission, that the provisions of this section will be adhered to.

E. FORM AND CONTENT

1. The Department of Mental Health and Mental Retardation shall present project requests to the State Building Commission on such forms and in such manner as the State Building Commission shall require.
2. Grantees seeking State financial participation in a capital project in accordance with the provisions of this policy, shall submit their request on such forms and in such manner as shall be determined by the Department of Mental Health and Mental Retardation.

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11.01 CERTIFICATE OF NEED FOR HEALTH CARE FACILITIES

An agency or institution proposing to build a health care facility requiring a Certificate of Need under Title 53, Chapter 54, T.C.A., shall first obtain approval of the Health Facilities Commission and shall have obtained a Certificate of Need before requesting State Building Commission consideration and approval of the proposed health care facility project. This policy shall not apply to any facility that does not serve the general public. *[SBC Meeting Minutes 5/24/79]*

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**12.01 APPROVAL OF GRANTS MADE BY THE DEPARTMENT OF CONSERVATION
PURSUANT TO TITLE 11, CHAPTER 1, T.C.A. [SBC Meeting Minutes 10/16/79]**

A. BACKGROUND

1. The Department of Conservation is authorized to participate in the construction of utility systems beneficial to the Tennessee outdoor recreation area system by Tennessee Code Annotated § 11-1-113:

"Subject to the approval of the Building Commission, the Commissioner of Conservation is hereby authorized to make grants, as funds are available, to any municipality, county, town or city, or utility in order to assist in providing utility service to any state park, forest, or any unit of the Tennessee outdoor recreation area system authorized by § 11-3-303. Such grant shall be for construction purposes only and shall be directly proportional to the benefits accruing to the state facility by the utility system. Utility systems are hereby defined as including water, sewerage, electric and solid waste."

This policy sets forth the position of the State Building Commission on approval of such grants.

B. GENERAL POLICIES

1. It is the general policy of the State Building Commission to favor grants for construction of extensions of utility service upon terms which are fair and equitable to all parties. This would in the usual case include at least a partial recovery of the financial contribution of the Department of Conservation to the project in the form of reduced water rates, rebate of tap-in fees, or otherwise, in accordance with the standard policies of the utility.
2. No approval will be granted unless the documents and information required by the following guidelines or reasons for absence, are presented. All deviations from the standard policies of the utility district must be fully justified.

C. GUIDELINES

1. No commitment for participation shall be made by the Department of Conservation until approval has been granted by the State Building Commission.
2. The participation must meet the eligibility criteria of the TCA 11-1-113.

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CONSERVATION GRANTS

3. The Department of Conservation shall conduct a feasibility study in conjunction with the staff of the State Building Commission Executive Sub-Committee staff which shall consider available alternatives, including installation and operation of a wholly-owned, independent system, and a report of such study shall be provided to the State Building Commission. The Department of Conservation shall obtain the financial statements and consider the financial condition of the utility.
4. The Department of Conservation shall provide to the State Building Commission a written agreement between it and the utility covering construction of the extension, and the quality of service to be provided by the utility, setting forth the maximum amount of funds to be paid by the State, and containing safeguards to ensure that the project is completed at or before the payment of all State funds. If the rates for water purchased and maintenance to be charged to the Department of Conservation are other than the standard rates charged by the utility, the agreement shall specify the method of computing such rates. The agreement shall contain such provisions as are required by regulations of the Department of Finance and Administration for service contracts to the extent applicable.
5. The Department of Conservation shall provide to the State Building Commission the following, either
 - a. A copy of the written policy of the utility with regard to extension of utility services, or
 - b. A written statement from the chief operating officer of the utility (1) stating that there is no written policy on extension of utility services and (2) describing in detail the practice as it is then in effect for all persons or classes of persons; and
 - c. A written statement from the Commissioner of Conservation stating either that (1) the agreement between the Department of Conservation and the Utility is at least as favorable to the Department of Conservation as the generally applicable policies, or (2) the agreement is less favorable than the generally applicable policies, together with the justification for deviation from the standard policies of the utility.
6. Prior to submission of the project to the State Building Commission, the Department of Conservation shall obtain the approval of the State Architect for the proposed engineering plans and estimated costs.
7. The Department of Conservation shall provide to the State Building Commission a worksheet showing the computation of the costs to be paid by the Department of Conservation in connection with the extension of utility services, and the rates to be charged for service to the Department of Conservation if other than the standard rates for persons in the same category, together with the assumptions upon which such computations were based and the sources of such assumptions.

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13.01 NASHVILLE THERMAL TRANSFER CORPORATION BOARD MEMBERSHIP

The Commission, in accordance with the Charter of the Nashville Thermal Transfer Corporation, will appoint, by name and State title, two members to the Board of Trustees for the Nashville Thermal Transfer Corporation.

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14.01 MANAGEMENT OF FACILITIES REVOLVING FUND *[SBC Meeting Minutes 7/3/90, 8/26/94 and 2/11/99]*

- A. The Facilities Revolving Fund (FRF), pursuant to T.C.A. 9-4-901 et seq., will charge each State agency its proportionate share of the cost of housing. The amount charged will be based on a rate per rentable square foot, determined by evaluating current market rental rates and other related market factors. This rate will then be multiplied by the amount of space occupied by the agency. Different rates will be charged for various types of office space and support facilities and for various geographic regions. Special use facilities: driver's license testing centers, laboratories, and farms will be charged rates which reflect their respective (total) occupancy expense. The Division of Real Property Management will assess all rate factors annually, then submit FRF rates for all of the various categories of space to the Commissioner of Finance and Administration for his review and recommendation to the State Building Commission (SBC).
- B. The Commissioner of Finance and Administration will administer the Facilities Revolving Fund. The Commissioner of Finance and Administration has empowered the Division of Real Property Management to recommend policy, develop procedures, and operational guidelines, and direct the day-to-day operation of the fund. The Division of Real Property Management shall:
1. work as a liaison between the respective agencies and the SBC;
 2. develop procedures to charge State agencies appropriate lease amounts based on rates established in accordance with this policy;
 3. develop procedures to implement approved FRF policy, with the assistance of appropriate State agencies; the procedures will include guidelines for the review of all plans, costs and revenues related to the use, purchase, sale or construction of a FRF asset to insure consistent and equitable treatment for all State agencies and, further, to insure the efficient and effective use of all FRF assets;
 4. annually present to the SBC:
 - (a) a comprehensive budget projecting both revenues and expenditures of the Fund;
 - (b) a report reflecting the expenditures and fiscal year-end condition of the FRF;

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5. develop methodologies to determine which facilities shall be included in the fund.
- C. With full implementation, all State-occupied space may be included in the fund. Facilities currently not in the fund include, but are not limited to, parks and open land, military installations, institutional space and Department of Transportation regional and local facilities.
- D. The FRF will be used to maintain and operate State-owned facilities, to provide debt service for existing buildings and future acquisitions, to pay relocation expenses of State agencies (including standard office furniture and partitions), to pay lease costs for non-State owned facilities, and to fund needed renovation work, capital maintenance and energy management improvements.

Housing related expenditures will be classified in three categories: non-discretionary, discretionary, and administrative. All expenditures associated with a building in the FRF will be charged to the fund. Agencies will, however, be required to reimburse the fund for discretionary expenditures.

- Non-discretionary: Required expenditures for **normal** operation, management and/or construction of a facility. Non-discretionary expenditures will generally include such items as debt service on general obligation bonds authorized for building repairs and/or construction, lease expenses for non-State owned buildings, and normal operational expenditures such as utilities, janitorial services, and maintenance, as decided by approved SBC policy and FRF procedures and guidelines. Agencies will not reimburse the fund for non-discretionary expenditures.
 - Discretionary: Expenditures that are not considered **normal** for the operation of a facility, as determined by SBC policy and FRF procedures and guidelines. Generally, a discretionary expense is one that is required or requested by the agency, but is not necessary for the general use of a facility. Agencies will reimburse the fund for these type expenditures. The budget office will be asked to verify that agency funds are available prior to approval of these expenditures.
 - Administrative: Direct administrative expenditures including fund administration, architectural, design, construction and renovation, and expenditures associated with building management and operations will be paid by the fund. Costs that are necessary to facilitate the direct services provided by the fund's service providers, may also be paid by the fund. Such expenses shall be defined and identified by the Division of Real Property Management. No current or future positions are to be directly funded under the FRF allotment code; however, the fund may reimburse those agencies where necessary and appropriate services and positions are budgeted and provided.
- E. The following will require SBC examination and/or approval:

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FACILITIES REVOLVING FUND

1. The lease rates to be charged State agencies will be developed in accordance with Section A above, and be submitted to the SBC for approval, prior to implementation.
 2. The annual report of revenue and expenditures of the fund, prepared in accordance with this policy, will be submitted to the SBC for examination, no later than 120 days after the end of the fiscal year.
 3. The annual FRF budget will be submitted to the SBC for approval, prior to the beginning of the respective fiscal year, by coordinating the proposed spending plans of the fund's service providers: General Services, Capital Projects Management, and Real Property Management unless the annual FRF budget has been presented to the General Assembly in the Governor's budget document for that fiscal year.
 4. All FRF policies, and any recommended changes to such policies, shall be approved by the SBC.
- F. This policy is intended to allow all agencies housed in FRF properties, and all FRF service providers and facilitators, to continue to work within federal government guidelines, regarding circular A/87 funding issues and other federal programs.
- G. Fund revenue is dedicated for facility and housing related expenditures, and fund balances will be carried over from year to year.
- H. All items that currently fall under the SBC's purview will continue to require its examination and approval.
- I. The above stated policy pertains to Facilities Revolving Fund resources and issues only.

POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

**15.01 QUALIFICATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR
PERFORMING WORK ON STATE OF TENNESSEE PROJECTS SUBJECT TO
STATE BUILDING COMMISSION APPROVAL [SBC Meeting Minutes 7/11/91]**

A. PURPOSE

1. It is the intent of the State Building Commission that construction contracts for projects under its supervision be procured through procedures promoting competition to the greatest extent possible.
2. Whereas the competitive sealed bid process is used, it is the intent of the State Building Commission to award contracts to a responsible bidder submitting the lowest responsive bid.
3. As used in subparagraph A(2) herein, "responsible" refers to the qualifications required of a contractor or subcontractor as determined by the Commission, including but not limited to considerations of the skill and ability for the performance of the work called for in the particular project and whether the contractor or subcontractor is disqualified pursuant to this policy.
4. As used in subparagraph A(2) herein, "responsive" refers to the form and content of the bid meeting any and all requirements of the bidding documents.

B. POLICY

1. Requirements Contained in Bid Documents
 - a. Bidding documents, primarily the specifications, may include requirements for contractors and subcontractors to possess certain qualifications to perform the work.
 - b. If a contractor does not meet the requirements as contained in the bid documents then said bid shall be rejected. If a subcontractor is required to be listed in the bid, and no substitution has otherwise been authorized by the State Building Commission, and such listed subcontractor does not meet the requirements contained in the bid documents for the work they are to perform, then the contractor's bid shall be rejected. Failure of a contractor or subcontractor to meet the requirements contained in the bid documents shall not be the only grounds to reject a bid.

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- c. Rejection by the State Architect of a bid for failure to meet any requirement under this Section B(1) shall be final and binding. The contractor or subcontractor rejected under this Section B(1) shall not be entitled to the procedures specified in Section B(5) herein.
- 2. Disqualification Due to Failure to Have Requisite License
 - a. An unlicensed contractor or subcontractor shall be disqualified to bid on or be awarded a contract for any State Building Commission project and any bid containing an unlicensed contractor or subcontractor as a required listed subcontractor shall be rejected. As used in this Section B(2), unlicensed means failure to be licensed or improperly licensed pursuant to the Tennessee Contractors Licensing Act, T.C.A. Sections 62-6-101 et seq., as it may be amended, if applicable, or pursuant to any other Tennessee statute which requires a license for the work to be performed.
 - b. If a bid is rejected by the State Architect under this Section B(2), subsequently obtaining the requisite license shall not in any way affect a rejected bid.
 - c. The State Architect shall notify the contractor or subcontractor in writing if a bid is rejected solely due to failure to be adequately licensed. If a contractor or subcontractor disagrees with this finding, it must present written evidence of adequate licensure and the State Architect within seven days of receipt of notice from the State Architect. If the State Architect then determines the contractor or subcontractor is adequately licensed, the bid may then be considered.
 - d. The period of disqualification to bid on or be awarded contracts for State Building Commission projects under this Section B(2) shall continue until the requisite license is obtained.
 - e. Rejection by the State Architect of a bid due to absence of the requisite license under this Section B(2) shall be final and binding. The contractor or subcontractor whose bid is rejected under this Section B(2) shall not have available the procedures specified in Section B(5) herein.
- 3. Disqualification Pursuant to T.C.A. Section 12-4-601 et seq.
 - a. Contractors or subcontractors shall be disqualified to bid on or be awarded contracts for any project under the supervision of the State Building Commission if it is unlawful for any contractor or subcontractor which submitted the bid to solicit employment on any contract associated with the State pursuant to T.C.A. Section 12-4-601 et seq., as it may be amended and any bid so submitted shall be rejected. If a subcontractor

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which may not solicit employment with the State pursuant to T.C.A. Section 12-4-601 et seq., is nevertheless included in a bid as a required listed subcontractor and no substitution has been authorized by the State Building Commission then the bid shall be rejected as non-responsive. If a subcontractor which may not solicit employment with the State pursuant to T.C.A. Section 12-4-601 et seq., is included in a bid and is not a required listed subcontractor then the bid may be accepted but the affected subcontractor shall be rejected and the contractor must substitute an acceptable subcontractor at no change in cost under the contract.

- b. The period of disqualification to bid on projects under the supervision of the State Building Commission or to be included in a bid on such projects under this Section B(3) shall extend to the period of time specified in T.C.A. Section 12-4-601 et seq., as it may be amended.
- c. The State Architect shall notify the contractor or subcontractor in writing if a bid is rejected under Section B(3). If a contractor or subcontractor disagrees with this finding, it must present its position in writing to the State Architect within seven days of receipt of notice from the State Architect. If the State Architect determines disqualification is not appropriate under this Section B(3), then the bid may be considered.
- d. Rejection of a bid by the State Architect under this Section B(3) shall be final and binding. The contractor submitting a bid which has been rejected under this Section B(3) or the subcontractor rejected under this Section B(3) shall not have available the procedures specified in Section B(5) herein.

4. Disqualification Pursuant to Unsatisfactory Performance

- a. A contractor or subcontractor that has demonstrated unsatisfactory performance on current or past State projects may be disqualified by the State Building Commission, from bidding on or being allowed to work on future projects under the supervision of the State Building Commission.
- b. The period of disqualification may continue for a period of time determined by the State Building Commission. However, said period of time may not exceed three (3) years. Said period of disqualification shall be deemed to begin upon the date the State Building Commission finds a contractor or subcontractor to be disqualified.
- c. A contractor or subcontractor may be deemed to have demonstrated unsatisfactory performance on current or past State projects if any one of the following criteria are met:

- (1) Performance of work without proper licenses from the State;

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- (2) Non-payment of prevailing wages or unemployment insurance;
 - (3) Non-payment of, or failure to promptly pay monies due subcontractors or material suppliers unless there exists a good faith dispute regarding the amount owed;
 - (4) Failure to timely meet the financial requirements of a contract (including but not limited to insurance requirements);
 - (5) Use of unlicensed or improperly licensed subcontractors;
 - (6) Use of subcontractors which is inconsistent with the bid documents or subcontractors who were unapproved in accordance with requirements of the contract documents;
 - (7) Providing false or incomplete information on qualification, bidding, or contract documents (including subsequent documentation required by the contract) either when the contractor or subcontractor actually knew the information was false or incomplete or with the exercise of reasonable diligence should have known said information was false or incomplete;
 - (8) Requesting or obtaining State funds on current or past contracts which the contractor or subcontractor knew were not due under the contract or with the exercise of reasonable diligence should have known were not due under the contract;
 - (9) Acting in any manner, whether willful or negligent, including but not limited to misrepresentation or failure to act, which allows contractors or subcontractors, State personnel, design professionals or any other party associated directly or indirectly with a State project to obtain funds from the State which were not properly due under a contract;
 - (10) Failure to submit or adhere to contractually required schedules when failure is fault of contractor or subcontractor;
 - (11) Failure to cooperate in accordance with terms of contract; or
 - (12) Unsatisfactory performance of work on State or other projects, including but not limited to, refusal to correct workmanship not in accordance with the contract documents, termination for cause, or failure to provide supervision required by the contract documents.
- d. The foregoing list contained in subsection B(4)(c) is not an exhaustive enumeration of instances of unsatisfactory performance by a contractor or subcontractor. The State Architect and CQRP may recommend and the State Building Commission may disqualify a contractor or subcontractor from bidding on future projects under its supervision if the Commission determines that the contractor or subcontractor has not performed satisfactorily on current or past State projects although the basis for disqualification is not enumerated in subsection B(4)c) above.
- e. A Contractor's Evaluation Report (Form CER-1), will be completed by the contracting agency on all finished projects under the supervision of the State Building Commission and kept on file. However, a CER-1 must be

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initiated and maintained as soon as it has come to the attention of a State department or agency that a contractor or subcontractor has performed unsatisfactorily on a State project. Such reports are to be produced by anyone having reasonable knowledge of or familiarity with the project involved, such as State facility managers, project managers, and design professionals. Completed CER-1 forms should be sent immediately to the State Building Commission in care of the State Architect for action. A copy of completed CER-1 forms shall be kept on file in the State Architect's Office and available for review by interested parties.

- f. Failure for State personnel to timely initiate, maintain, complete, or submit a CER-1 form shall not affect whether the State Building Commission may disqualify a contractor or subcontractor under this policy.
- g. The State Architect, CQRP, and State Building Commission may consider information regarding the performance of a contractor or subcontractor on projects not involving the State, such as documented pre-qualification submittals, reference checks, and documented performance on other than State projects.

5. Disqualification Procedures

- a. If the State Architect has received information which leads the State Architect to conclude that a contractor or subcontractor should be disqualified from work on future State projects pursuant to Section B(4) herein, the State Architect shall prepare a recommendation of disqualification to the Contractor Qualifications Review Panel (CQRP). The information referred to in this subsection (a) may be derived in whole or in part from CER-1 forms or may be derived in whole or in part from other sources. The State Architect may not recommend disqualification if such recommendation is solely based upon a CER-1 form completed more than one year prior to the notice required in subsection B(5)(d) of these Disqualification Procedures. Failure of the State Architect to act promptly upon receipt of information regarding possible disqualification shall have no effect upon the recommendation of disqualification and any subsequent disqualification.
- b. The CQRP will be composed of the following:
 - (1) A representative of State government, selected by Capital Projects Management, Department of Finance and Administration. Such representative shall have no direct relationship to the incidences relied upon by the State Architect for the initiation of disqualification procedures against the contractor or subcontractor.
 - (2) A volunteer representative of the contracting community of Tennessee, who has no direct or indirect interest in the outcome of

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these proceedings, in the parties involved, or in the situation or events relied upon by the State Architect for his or her disqualification recommendation. The selection of this representative will be the responsibility of the representative professional associations of the Tennessee building contracting industry.

- (3) A volunteer representative of the professional design community of Tennessee who has no direct or indirect interest in the outcome of the proceedings, in the parties involved, or in the situation or events relied upon by the State Architect for his or her disqualification recommendation. The selection of this representative will be the responsibility of the representative professional associations of the Tennessee design profession.
- c. It will be the responsibility of the State Architect to contact Capital Projects Management, Department of Finance and Administration, and industry organizations to provide their representatives for the purpose of empanelling a CQRP, convene meetings of the CQRP and set date, time and place for each.
- d. The State Architect shall notify the contractor or subcontractor in writing of any recommendation, and the grounds therefore, to be presented to the CQRP and the State Building Commission regarding its disqualification from bidding State work. Said notice shall include copies of all completed CER-1 forms that are relied upon by the State Architect's recommendation. The contractor or subcontractor shall be provided other documentation relied upon by the State Architect upon request.
- e. The contractor or subcontractor may file written objections to the State Architect's recommendation within ten (10) working days from receipt of the notification in subsection B(5)(d) hereof. Upon written request within said ten (10) day period by the contractor or subcontractor and for good cause shown, a reasonable extension of time to file written objections shall be granted provided an agreed upon extension of time must be in writing and signed by the State Architect. Objections shall be filed with the State Architect at the following address:

Attention: _____
State Architect's Office
Suite 2100, 312 Eighth Avenue North
Nashville, Tennessee 37243

Or as otherwise directed by the State Architect in writing

- f. If timely objections are filed by the objecting party, the State Architect shall, within ten (10) working days of receiving the objection, notify the

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objecting party in writing of its opportunity to present its position to the State Architect regarding the recommendation of disqualification. Presentation of the objecting party's position to the State Architect shall be held as soon as is practical. The time, place, and manner of the objecting party's presentation to the State Architect shall be determined by the State Architect but in no event shall it be held more than twenty (20) working days after receipt by the State Architect of the party's objections, unless the objecting party and the State Architect agree on a later date.

- g. Any failure by the State Architect to give notice within the time periods specified in subsection B(5)(f) shall not affect the recommendation of disqualification by the State Building Commission but such information will be available to the State Building Commission for consideration. Failure of the contractor or subcontractor to present timely written objections to the State Architect's recommendation or failure of the objecting party to present evidence to the State Architect at the time and place as required in subsections (e) and (f) above shall have the following consequences:
 - (1) The State Architect is not required to notify the contractor or subcontractor of the scheduled CQRP or State Building Commission meeting at which the recommended disqualification of the contractor or subcontractor is an agenda item;
 - (2) The State Architect shall present his or her recommendation to the CQRP at its next meeting and notify the panel that there is no objection to the recommendation of disqualification; and
 - (3) The contractor or subcontractor recommended for disqualification shall have waived any and all objections to the disqualification and shall not present objections to the CQRP or State Building Commission.
- h. If the contractor or subcontractor presents written objections and makes a presentation to the State Architect as permitted under subsections (e) and (f) above, the State Architect may withdraw his or her proposed recommendation of disqualification to the CQRP if he or she determines disqualification would not be appropriate. Such withdrawal to be within the discretion of the State Architect.
- i. If the contractor or subcontractor has complied with subsections (e) and (f) herein and the State Architect has not withdrawn his or her recommendation of disqualification, the State Architect shall give the objecting party ten (10) calendar days' prior written notice of the next CQRP meeting and the State Architect shall present his or her recommendation to the panel for consideration at that meeting. Upon written request by the contractor or subcontractor and for good cause

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shown the presentation before the CQRP may be postponed for a reasonable period of time. The objecting party shall present its objections to the panel at the meeting specified in the notice in whatever manner the panel allows; provided, however, that the State Architect and contractor or subcontractor shall be entitled to present witnesses and to cross-examine adverse witnesses. Failure of the contractor or subcontractor to present its objections to the CQRP shall operate as a waiver of any recommendation by the State Architect or CQRP to the State Building Commission. The CQRP, after consideration of all evidence and arguments presented, may recommend approval, disapproval or modifications to the recommendations of the State Architect. If the CQRP unanimously rejects the recommendation for disqualification, the State Architect shall file a written report of the action with the State Building Commission; and if the State Building Commission accepts the recommendation, then no further action shall be taken. If the CQRP recommends disqualification, or if the CQRP fails to act unanimously, or if the Building Commission rejects the CQRP's unanimous recommendation not to disqualify then the action of the CQRP, including the tally of votes, will be presented at the next scheduled meeting of the State Building Commission. The objecting party will be notified in writing of this meeting ten (10) days in advance and may present its objections to the Commission at that meeting in whatever manner the Commission allows; provided, however, upon written request of the contractor or subcontractor the presentation before the Building Commission may be postponed for a reasonable period of time and the Building Commission may hear the presentation at a special meeting if it chooses to do so in its discretion.

j. In the proceeding before the Commission, the following shall apply:

- (1) the State Architect and contractor or subcontractor are entitled but not required to submit a written summary of their respective positions to each member of the Commission, and said summary submitted by the contractor or subcontractor shall be delivered to the State Architect for distribution to the Commission not less than five (5) days before the Commission meeting and said summary submitted by the State Architect shall be delivered to the contractor or subcontractor not less than five (5) days before the Commission meeting;
- (2) the proceeding before the Commission shall be recorded by a court reporter or tape recorded with the expense of said reporter to be borne by the unsuccessful party;
- (3) the State Architect and contractor or subcontractor shall be entitled to submit relevant information on the issue of disqualification and

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length thereof; the Commission shall determine the relevancy of any information;

(4) if requested, the contractor or subcontractor may be represented by counsel; and

(5) the State Architect and contractor or subcontractor are entitled to present witnesses and to cross-examine adverse witnesses.

k. The State Building Commission shall act upon the recommendations of the State Architect and CQRP based upon the record of the presentation. A vote by a majority of the Commission shall be sufficient to disqualify a contractor or subcontractor. Within forty-five (45) days of the presentation, the State Building Commission shall submit to the State Architect and contractor or subcontractor its written findings and conclusions regarding whether it finds adequate evidence to disqualify the contractor or subcontractor and the effective dates of any disqualification, provided, however, said period of disqualification shall not exceed three (3) years. The decision of the Commission is final and binding.

l. After State Building Commission action affirming disqualification, it shall be the responsibility of the State Architect, on behalf of the Commission, to notify those State departments, agencies or other entities involved in letting or funding State or other State entity contracts of those contractors or subcontractors disqualified from bidding on, or being awarded contracts for, projects under the supervision of the Commission and the extent of their disqualification.

m. Succeeding or related corporations, partnerships, joint ventures or other business organizations which have substantial factual or legal connections, continuity or identity with contractors or subcontractors that have been disqualified by the Commission shall be likewise disqualified from bidding, being awarded or performing work under, contracts for projects under the supervision of the State Building Commission. Whether an entity has "substantial factual or legal connections, etc." shall be determined based upon the procedures under Section B(5) provided that the CQRP shall not be involved.

6. **Miscellaneous**

a. The State Architect shall maintain a list of all contractors or subcontractors who have been disqualified from working on State Building Commission projects pursuant to Sections B(3), B(4) and B(5) herein. Such list, as is in effect on the date of advertisement for receipt of bids of any State Building Commission project, shall be included in the bidding requirements whenever practicable. A list of disqualified

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contractors or subcontractors for State Building Commission projects is a matter of public record and will be kept on file in the State Architect's office. Any contractor which submits a bid for a project under the supervision of the State Building Commission shall not include in its bid any contractor or subcontractor disqualified pursuant to this policy. Furthermore, any contractor performing work on a project under the supervision of the State Building Commission shall not allow any contractor or subcontractor disqualified pursuant to this policy to perform work on said project.

- b. If any bid is accepted which contains a contractor who has been disqualified pursuant to Sections B(3), B(4) and B(5) said bid may be reviewed and rejected by the State Architect at any time before the contract between the State and contractor is executed and delivered to the contractor.
- c. If any contractor is disqualified pursuant to Sections B(3), B(4) and B(5) after the contract between the State and contractor is executed and delivered to the contractor, said disqualification shall not affect the contract with the contractor and said contract shall remain in full force and effect.
- d. The conduct of the officers, directors, stockholders, employees, partners, joint venturers, or other individuals associated with the contractor or subcontractor may be imputed to the contractor or subcontractor if the conduct occurred on behalf of such party, or with its knowledge, approval or acquiescence.
- e. It is not the intent of this policy to create any sort of property interest on behalf of contractor or subcontractor whether express or implied and it shall not be interpreted to create any such interest.

******* END *******

POLICY and PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

16.01 APPROVAL OF GRANTS MADE BY DEPARTMENTS OR AGENCIES TO ANY MUNICIPALITY, COUNTY, TOWN OR CITY, OR UTILITY IN ORDER TO ASSIST IN PROVIDING UTILITY SERVICE FOR STATE PURPOSES.

A. BACKGROUND

1. Departments or Agencies are authorized to participate in the construction of utility systems beneficial to the State of Tennessee subject to the approval of the State Building Commission. The head of the Department or Agency is hereby authorized to make grants, as funds are available, to any municipality, county, town or city, or utility in order to assist in providing utility service for State purposes. Such grant shall be for construction purposes only and shall be directly proportional to the benefits accruing to the state facility by the utility system. Utility systems are hereby defined as including water, sewerage, electric, gas and solid waste.

This policy sets forth the position of the State Building Commission on approval of such grants.

B. GENERAL POLICIES

1. It is the general policy of the State Building Commission to favor grants for construction of extensions of utility service upon terms that are fair and equitable to all parties. This would in the usual case include at least a partial recovery of the financial contribution of the Department or Agency to the project in the form of reduced water rates, rebate of tap-in fees, or otherwise, in accordance with the standard policies of the utility.
2. No approval will be granted unless the documents and information required by the following guidelines or reasons for absence, are presented. All deviations from the standard policies of the utility district must be fully justified.

C. GUIDELINES

1. No commitment for participation shall be made by the Department or Agency until approval has been granted by the State Building Commission.
2. The Department or Agency shall conduct a feasibility study in conjunction with the staff of the State Building Commission Executive Sub-Committee staff which

shall consider available alternatives, including installation and operation of a wholly-owned, independent system, and a report of such study shall be provided to the State Building Commission. The Department or Agency shall obtain the financial statements and consider the financial condition of the utility.

3. The Department or Agency shall provide to the State Building Commission a written agreement between it and the utility covering construction of the extension, and the quality of service to be provided by the utility, setting forth the maximum amount of funds to be paid by the State, and containing safeguards to ensure that the project is completed at or before the payment of all State funds. If the rates for water purchased and maintenance to be charged to the Department or Agency are other than the standard rates charged by the utility, the agreement shall specify the method of computing such rates. The agreement shall contain such provisions as are required by regulations of the Department of Finance and Administration for service contracts to the extent applicable.
4. The Department or Agency shall provide to the State Building Commission the following, either
 - a. A copy of the written policy of the utility with regard to extension of utility services, or
 - b. A written statement from the chief operating officer of the utility (1) stating that there is no written policy on extension of utility services and (2) describing in detail the practice as it is then in effect for all persons or classes of persons; and
 - c. A written statement from the Head of the Department or Agency stating either that (1) the agreement between the Department or Agency and the Utility is at least as favorable to the Department or Agency as the generally applicable policies, or (2) the agreement is less favorable than the generally applicable policies, together with the justification for deviation from the standard policies of the utility.
5. Prior to submission of the project to the State Building Commission, the Department or Agency shall obtain the approval of the State Architect for the proposed engineering plans and estimated costs.
6. The Department or Agency shall provide to the State Building Commission a worksheet showing the computation of the costs to be paid by the Department or Agency in connection with the extension of utility services, and the rates to be charged for service to the Department or Agency if other than the standard rates for persons in the same category, together with the assumptions upon which such computations were based and the sources of such assumptions.

ITEM 17

ISSUING DEBT FOR SBC PROJECTS

POLICY and PROCEDURE of the **STATE BUILDING COMMISSION** of **TENNESSEE**

17.01 ISSUING DEBT FOR STATE BUILDING COMMISSION PROJECTS [*SBC Minutes 5/8/03*].

- A. It is the policy of the State Building Commission that no budgeted operational expenditures (including employee labor cost) shall be reimbursed with debt proceeds unless such debt is issued pursuant to TCA 9-10-101 as tax revenue anticipation notes. This policy applies to proceeds of all state debt, whether issued by the State Funding Board, the Tennessee State School Bond Authority, or any other state debt issuer.

ITEM 18

USE OF THE STATE CAPITOL

POLICY and PROCEDURE of the **STATE BUILDING COMMISSION** of **TENNESSEE**

18.01 USE OF THE TENNESSEE STATE CAPITOL

- A. The State Building Commission concurred with a policy adopted by the Capitol Commission to ban smoking in the public spaces of the Tennessee State Capitol [*SBC Minutes 11/13/03*].

ITEM 16

UTILITY GRANTS

shall consider available alternatives, including installation and operation of a wholly-owned, independent system, and a report of such study shall be provided to the State Building Commission. The Department or Agency shall obtain the financial statements and consider the financial condition of the utility.

3. The Department or Agency shall provide to the State Building Commission a written agreement between it and the utility covering construction of the extension, and the quality of service to be provided by the utility, setting forth the maximum amount of funds to be paid by the State, and containing safeguards to ensure that the project is completed at or before the payment of all State funds. If the rates for water purchased and maintenance to be charged to the Department or Agency are other than the standard rates charged by the utility, the agreement shall specify the method of computing such rates. The agreement shall contain such provisions as are required by regulations of the Department of Finance and Administration for service contracts to the extent applicable.
4. The Department or Agency shall provide to the State Building Commission the following, either
 - a. A copy of the written policy of the utility with regard to extension of utility services, or
 - b. A written statement from the chief operating officer of the utility (1) stating that there is no written policy on extension of utility services and (2) describing in detail the practice as it is then in effect for all persons or classes of persons; and
 - c. A written statement from the Head of the Department or Agency stating either that (1) the agreement between the Department or Agency and the Utility is at least as favorable to the Department or Agency as the generally applicable policies, or (2) the agreement is less favorable than the generally applicable policies, together with the justification for deviation from the standard policies of the utility.
5. Prior to submission of the project to the State Building Commission, the Department or Agency shall obtain the approval of the State Architect for the proposed engineering plans and estimated costs.
6. The Department or Agency shall provide to the State Building Commission a worksheet showing the computation of the costs to be paid by the Department or Agency in connection with the extension of utility services, and the rates to be charged for service to the Department or Agency if other than the standard rates for persons in the same category, together with the assumptions upon which such computations were based and the sources of such assumptions.

Attachment 1
to
BY-LAWS, POLICY, AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

FORM SBC-6

Standard Form of Agreement
Between
Owner
and
Designer
Revised February 1999



Standard Form of Agreement between Owner and Designer

Part A:

A.1 This AGREEMENT is made this _____ day of _____ in the year _____ by and between the **State of Tennessee**

DEPARTMENT OF FINANCE AND ADMINISTRATION on the behalf of the

<<State Agency>>

hereinafter called the **Owner**, and

<<Designer Firm>>

<<Designer Address>>

<<City>>, <<State>> <<Postal Code>>

hereinafter called the **Designer**.

A.2 WITNESSETH, whereas it is the intention of the Owner to complete the work of the following project:

Project Title: <<Project Title from SBC-1>>

Institution: <<Institution>>

Location: <<Location>>

SBC Number: <<SBC Number>>

Project Description <<Project Description from SBC-1>>

hereinafter called the Project, at a Maximum Allowable Construction Cost not to exceed

<<MACC>> AND NO/100TH DOLLARS

\$<<MACC DOLLAR AMOUNT>>

unless adjusted by the Owner by written Supplemental Agreement, and
whereas the Owner desires the services of the Designer hereinafter set forth.

A.3 NOW, THEREFORE, The Owner and The Designer, for the consideration hereinafter set forth, agree as follows:

Part B:

B.1 The words “**Terms and Conditions**” as used in this Agreement shall be a reference to the provisions contained in the February 1999 Form SBC-6a, Standard Terms and Conditions for Agreement Between Owner and Designer. Form SBC-6a, Standard Terms and Conditions for Agreement Between Owner and Designer, Articles 1-16, pages 1-10, are hereby made a part of this Agreement as fully and to the same effect as if embodied verbatim herein.

B.2 The Designer shall provide professional services for the Project in accordance with the Terms and Conditions.

B.3 The Owner shall compensate the Designer in accordance with the Terms and Conditions as follows:

B.3.1 For the Designer’s Basic Services:

Paragraphs 2-1-<<Paragraph No.>> Through 2-1-<<Paragraph No.>>

☒ as defined in the Terms and Conditions, the fee shall be a lump sum of:

<<LUMP SUM AMOUNT>> AND NO/100TH DOLLARS

\$<<LUMP SUM AMOUNT>>

OR

N/A

as defined in the Terms and Conditions,

the fee shall be a multiple of Direct Expense with a maximum fee not to exceed:

<<DIRECT EXPENSE AMOUNT>>AND NO/100TH DOLLARS

\$<<NOT TO EXCEED AMOUNT>>

B.3.2. Compensation for the Designer, applicable to payment for basic services when such are based on a multiple of direct expense, and applicable to extra fees for Designer's Additional Services, are as follows:

B.3.2.1 Principal's time at a fixed rate, in dollars per hour, not to exceed one hundred twenty-five and no/100 dollars (\$125.00).

B.3.2.2 Employee's time computed at a multiple of two and forty-five one hundredths (2.45) times the employee's Direct Personnel Expense as defined in the Terms and Conditions, not to exceed the maximum hourly rate of one hundred twenty-five and no/100 dollars (\$125.00).

B.3.2.3 Professional consultants engaged for the normal structural, mechanical, electrical, civil, or architectural services, at a multiple of one and twenty one hundredths (1.20) times the amount billed to the Designer, computed in accordance with clauses B.3.2.1 and B.3.2.2 above.

B.3.3 Designer's Principals, for the purpose of this Agreement are:

Principal(s)

B.3.4 Designer's Consultants, for the purposes of this Agreement, are:

Services	Firm	Principal	Registration Number
Structural:	Structural		TN Lic. #
Mechanical:	Mechanical		TN Lic. #
Electrical:	Electrical		TN Lic. #
Architectural:	Architectural		TN Lic. #
Civil:	N/A		
Landscape:	N/A		
Other:	N/A		

B.3.5 For the **Designer's Reimbursements**, amount expended as defined in the Terms and Conditions.

B.3.6 For obtaining surveys, reports, tests, and engineering data, as defined in the Terms and Conditions, the Owner shall reimburse the Designer at a multiple of one and twenty one hundredths (1.20) times the direct cost.

B.3.7 The conditions of payment shall be as described in the Terms and Conditions.

Part C:

C.1 Professional Liability Insurance coverage, as set forth in the Terms and Conditions, is required as follows:

<<INSURANCE AMOUNT>>AND NO/100TH DOLLARS

<<\$INSURANCE>>

Part D:

D.1 The Designer agrees to begin work upon receipt of a fully executed counterpart of this Agreement and to pursue its work with diligence.

D.2 The Designer agrees to a schedule as follows:

☒ To complete services described in paragraphs 2-1-1 through 2-1-21 of the Terms and Conditions within DDP calendar days from the date of Notice to Proceed:

AND

☒ To complete services described in paragraphs 2-1-22 through 2-1-26 of the Terms and Conditions within an additional CDP calendar days from approval of the work performed in paragraphs 2-1-1 through 2-1-21 of the Terms and Conditions

Reviewed and approved:

By: _____ Date: _____
State Architect or designee

In witness whereof, the Owner and the Designer have executed this Agreement.

Designer:

<<DESIGNER FIRM>>

Person(s) signing for Designer must be named as Principal above

Comptroller: *(for Compliance with Policy & Statute)*

if over \$50K

By: _____

By: _____

Title: _____

Date: _____

Date: _____

Owner:

State of Tennessee

As required by State Building Commission policy and requirements of the Contracting Agency

Attorney General: *(for Form and Legality)*

if over \$100K

Department of Finance & Administration

M. D. Goetz, Jr., Commissioner

By: _____

By: _____

Date: _____

Date: _____



Standard Terms and Conditions for Agreements between Owner and Designer

Article 1 FEES

1-1 The Owner shall compensate the Designer, in accordance with the Terms and Conditions as follows:

- (a) For the Designer's Basic Services, as defined in the Terms and Conditions, and comprising those paragraphs specifically cited in the Agreement or Supplement, the fee shall be either:

A lump sum amount computed in accordance with the Standard State Fee Schedule as described in the Terms and Conditions; or,

A Multiple of Direct Expense with a Maximum Fee not to exceed, and based upon the unit prices stipulated in this Agreement.

- (b) Extra fees for the Designer's Additional Services as described in these Terms and Conditions, a fee in addition to the Basic Services Fee may be allowed and computed based upon the unit prices stipulated in the Contract.
- (c) For the Designer's reimbursable expenses an amount expended at actual cost as defined in the Terms and Conditions.
- (d) Conditions of payment shall be as described in the Terms and Conditions.

1-2 When a project is composed of more than one building type, or involves mixes of renovations, new construction, and/or repetitive designs, an attachment showing the fee computation shall be made part of the Agreement.

1-3 If this Agreement provides for the payment of a Lump Sum Fee, it shall have been computed as follows:

- (a) The Owner agrees to pay the Designer a lump sum calculated as a percent of the Maximum Allowable Construction Cost from the Basic Services fee formula $27/\log P - 2$ wherein P is the Maximum Allowable Construction Cost indicated in this Agreement.
- (b) For renovations, repairs, alterations, etc., the fee is 125% of the Basic Services fee.
- (c) For repetitive buildings bid under a single construction contract, the fee for the first building will be calculated using the basic rate; the fee for the second building will be calculated using 75% of the basic rate; the fee for additional buildings three (3) through ten (10) will be calculated using 50% of the

basic rate; the fee for each building above ten (10) will be negotiated.

- (d) For projects with more than one building type, the fee shall be calculated using the different building types as separate projects unless special circumstances warrant otherwise.
- (e) If the project is to be awarded under multiple contracts, the lump sum fee shall be separately calculated for each, unless special circumstances warrant otherwise.
- (f) The Owner and the Designer shall negotiate a reduced fee for duplicated work to reflect an appropriate adjustment for reduced effort and for revisions required to adapt a specific project.

Article 2 DESIGNER'S SERVICES

2-1 Basic Services

2-1-1 The Designer agrees to begin work upon receipt of the fully-executed copy of this Agreement and to pursue the work with diligence. The Designer will provide accessible communications at their office during normal working hours which must include, as a minimum, an office phone with answering device/service and a FAX machine. The Designer agrees to a schedule in accordance with that set forth in Part D of this Agreement. Dates of completion shall be extended by the length of delays caused by fire, acts of God, unavoidable casualty, or unreasonable delays by Owner. The Designer shall inform the Owner in writing of any situation potentially causing a delay within twenty-one (21) days of its occurrence. The durations in Part D of this Agreement may not be altered without a letter of written Agreement from the State Architect or the State Architect's Designee.

2-1-1a The Designer's basic services consist of seven (7) phases described in this Article and include the approved Architectural/Engineering consulting services listed in this Agreement and meeting requirements of Paragraphs 2-1-40 and 2-1-41.

2-1-1b Surveys, Reports, and Tests

- (1) The Owner shall furnish the Designer with available information indicating boundaries of the building site and all rights, easements, and restrictions pertaining thereto.

- (2) The Designer shall be responsible for obtaining a survey of the building site from qualified consultants acceptable to the Designer, which shall include applicable grades and lines of streets, alleys, pavements, adjoining property, rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, locations, dimensions, and data pertaining to existing buildings, utilities, other improvements, locations of trees, and information concerning available service and utility lines, both public and private.
- (3) The Designer shall be responsible for obtaining reports on subsurface conditions including test borings or pits, environmental, mechanical, laboratory, or other tests for determining subsurface soil bearing capacities, and other soil or subsoil conditions required for the design of the project from qualified consultants acceptable to the Designer.
- (4) The Designer shall be responsible for obtaining structural, mechanical, environmental and other laboratory tests, field tests, inspections, and reports from qualified consultants known to and acceptable to the Designer as required by the Contract Documents.
- (5) The obtaining of surveys, tests, reports, engineering data, and any other information obtained by the Designer and described under sub-paragraphs 2-1-1b (2), (3), and (4) above is the responsibility of the Designer. The Owner shall reimburse the Designer at a multiple, as set forth in this Agreement, of the direct cost for obtaining this information from competent laboratory, engineers, and licensed surveyors selected by and responsible to the Designer, provided the selection and cost is approved by the Owner before it is ordered.

2-1-2 The Designer shall secure written approval of the Owner before proceeding with each phase of the project and, upon written request by the Owner, shall furnish to the Owner evidence of payment to its consultants for their work in the preceding phase.

2-1-3 The Owner is not obligated to proceed with any phase beyond the last phase specifically approved in writing.

2-1-4 The Designer shall conform to and be bound by standards, criteria, and memoranda of policy consistent with this Agreement and provided to the Designer by the Owner at the start of the project. Subsequent revisions and updates may result in a change in scope. The Designer shall, in accordance with generally accepted design standards of care, design the work in compliance with all applicable laws and codes. Any conflicts shall be promptly

reported in writing to the Owner with proposed strategies for resolution.

2-1-5 Design and Construction meetings shall be attended by a representative of the Design Team having authority and credentials to act on behalf of the Designer. Failure to provide the required representatives of the Design Team for a scheduled substantial or final inspection shall cause the cancellation and rescheduling of the inspection at the Designer's expense.

2-1-6 The specific duties and responsibilities of the Designer shall include those outlined as follows and others as necessary depending on the scope of the project.

2-1-7 Designer-Provided Documents

(a) As a part of Basic Services, the Designer shall provide, at no cost to the Owner:

- Documents as required by regulatory authorities;
- Partial submittals and intra-phase submittals as required by the project;
- Four complete sets of documents demonstrating suitable progress in a design Phase, when requesting incremental payments as permitted in Article 7, and
- Four complete sets of documents for each Phase submittal, demonstrating the deliverable product required for the Phase.

Incomplete sets of documents or documents that cannot be approved will not be considered as a set of Documents. Additional sets of documents requested by the Owner will be a reimbursable expense.

(b) The Designer shall furnish as many complete sets of drawings, Project Manuals and other bidding documents, as are necessary for bidding purposes according to the policy of the Owner. Reimbursement for these bidding documents shall be in accordance with **Article 6**.

(c) A copy of documents for bidding that are available on electronic media shall be provided to the Owner at no cost.

Program Phase

2-1-8 The Designer shall meet with the Owner to ascertain the general requirements for the project and shall meet with the project program committee to understand and verify the functional and departmental objectives of the project, to advise, with respect to time and budget, the following: selection of the site; the relationship of the project to other structures and facilities; and scope and functional aspects of the program.

2-1-9 The Designer shall show the progress to date, confirm the remainder of the schedule and obtain written approval of the Program Phase before proceeding with the Schematic Design Phase.

Schematic Design Phase

2-1-10 The Designer shall develop and submit to the Owner an analysis of the site describing significant physical and geologic features and characteristics, i.e., climate-topography-soils and conditions-ecology-utilities-circulation-views-noise and existing structures and shall describe the implication of the above factors on design.

2-1-11 The Designer shall develop and submit to the Owner conceptual diagrams of alternative approaches for translating programmatic requirements into conceptual design solutions. These diagrams shall include, but not be limited to, consideration of land use, functional relationships within the program, consideration of relationships to Master Plans and the Environment, relative volumes of circulation, land use, traffic, parking, transportation, utilities, and systems described in Paragraph 2-1-15 of this Article, and organization of major building functions.

2-1-12 The Designer shall prepare and submit to Owner visual studies illustrating the scale and relationship of the project components required in Paragraph 2-1-11 of this Article. Sketches of design concepts showing elevations and exterior appearances, and any other sketches or visual studies necessary for evaluation of the alternative concepts shall be submitted to the Owner. If necessary to communicate the design intent, massing studies in model and/or diagrammatic form shall be submitted to the Owner.

2-1-13 Upon written approval by the Owner of a design concept, the Designer shall prepare and submit to the Owner schematic drawings of the approved concept.

2-1-14 The schematic drawings required by Paragraph 2-1-13 of this Article shall include, but not be limited to, the following information: the basic design approach drawn at an agreed to scale, siting in relationship to the existing environment, relationship to Master Plans, circulation, organization of building functions, functional-aesthetic aspects of the design concepts under study, graphic description of critical details, and visual and functional relationship and compatibility to the surrounding environment.

2-1-15 The Designer shall prepare and submit to the Owner a description of the building systems. Detail of description on all systems should be consistent with the level of detail of the Schematic Design. The Designer shall describe, and give design criteria for the major elements of the following basic building

systems with basic economic and energy use considerations of all systems when required:

Built-in Equipment	Interior Walls
Electrical	Partitions
Elevators	Plumbing
Exterior Walls	Roof Systems
Finishes	Sight Lines
Floor on Grade	Site Construction
Floor Systems	Special Items
Foundations	Stairs
H.V.A.C	Structure

2-1-16 The Designer shall prepare and submit to the Owner an estimate of probable total construction cost based on proposed square footage and/or volume unit costs.

2-1-17 The Designer shall show the progress to date, confirm the remainder of the schedule and obtain written approval of the Owner of the Schematic Design Phase before proceeding with the Design Development Phase.

Design Development Phase

2-1-18 Based on written approval from the Owner of the Schematic Design Phase, the Designer shall develop and submit to the Owner a fully developed design concept. If needed to develop and communicate the design concept, the Designer shall furnish to the Owner exterior perspective drawings and/or working models and/or renderings at a mutually agreed to scale.

2-1-19 The Designer shall prepare and submit to the Owner floor plans showing spaces by name, number, actual net area of each space, structural module, mechanical, electrical and communication spaces, equipment, chases, and circulation area. The Designer shall also prepare and submit site plans (which show utilities), plumbing, electrical, mechanical, and structural plans and preliminary furnishings and equipment layouts to show accommodation for program requirements and engineering systems within the building and for contractor supplied equipment. Drawings shall show overall building dimensions. The Designer shall also prepare preliminary specifications giving basic descriptions of essential components of all systems. The level of detail on the plans and in preliminary specifications shall be at a level of detail for all components sufficient for the development of a preliminary Quantity Cost Estimate.

2-1-20 The Designer shall prepare and submit to the Owner: elevations, building sections, and design details showing use of materials and fenestration, fully developed so that the Designer can proceed with the Contract Document Phase when the Design Development Phase is approved.

2-1-21 The Designer shall prepare and submit to the Owner a Construction Cost Analysis showing allocation

of costs for various building systems. The basis for the Cost Estimate shall be a preliminary Quantity take-off which shall be required of all building systems described in Paragraph 2-1-15 of this Agreement. The Construction Cost Estimate shall show escalation projected from date of estimate to projected bid date.

- 2-1-22** The Designer shall show the progress to date, confirm the remainder of the schedule and obtain written approval of the Owner of the Design Development Phase before proceeding with the next phase. In the case of a new building or major addition, the Designer shall also make a presentation of the early design concept to the State Building Commission.

Construction Document Phase

- 2-1-23** Upon written approval of the Design Development Phase by the Owner, the Designer shall prepare and submit to the Owner Construction Documents, including working drawings and Project Manual setting forth all items necessary for bidding and proper execution of the work including materials; workmanship, finishes, mechanical and electrical systems; special equipment; site work; utility connections and services; bidding information; proposal, bid, contract, and bond forms; general, special and supplementary general conditions of the contract; and any and all other information required for receiving bids on the project and administration of the Construction Phase. Upon completion of the Construction Documents, the Designer shall provide the Owner with a written confirmation of the construction cost estimate. If the Designer cannot confirm the validity of the agreed upon construction cost estimate at the Design Development Phase, then the Designer shall provide an updated construction cost estimate.

- 2-1-24** Upon receipt of the review comments in writing from the Owner, the Designer shall complete the Construction Documents to conform with the review comments and furnish final copies to the Owner prior to release of plans for bids.

- 2-1-25** The date for receipt of bids shall be established by the Owner.

- 2-1-26** The Designer agrees that no approval of the Construction Documents by any person, body or agency shall relieve the Designer of the responsibility for the adequacy, fitness, suitability, and correctness of architectural and engineering design and for designing the work in accordance with sound and accepted engineering and architectural practices.

Bidding or Negotiation Phase

- 2-1-27** The Designer, following the Owner's written approval of the Construction Documents Phase, shall assist the Owner in obtaining bids or negotiated proposals, and in awarding and preparing construction contracts.

- 2-1-28** The Designer, following the award of the contract, shall complete and submit to the Owner, project information data on the SBC-25 Form to the extent information is obtainable.

Construction Phase

- 2-1-29** The Designer's relationships to the General Contractor shall include those set forth in the AIA A201 General Conditions of the Contract between the Owner and Contractor, utilizing such editions as modified and approved by the Owner and included in the Contract Documents.

- 2-1-30** The Construction Phase begins with the execution of the construction contract(s). The Construction Phase includes the professional services required to direct the two components of construction: "office" and "field".

- 2-1-31** The professional services performed during the Office components include the complete administration of all construction contracts; the review of Contractor's payments applications and certifications of the amount due the contractor; the review, approval or the taking of other appropriate action upon the contractor's submittals, such as shop drawings to determine conformance with the design intent, the making of revisions, corrections or clarifications in the contract documents by supplemental instructions or change orders, together with all correspondence, and clerical work in connection therewith and sufficient on-site project observations during construction to substantiate any of the above and substantial completion inspections and accepting the completed project, together with such certificates, manuals, and guarantees as provided in the contract documents. The services of the Designer's Field Representative shall not be utilized for reviewing submittals unless the Field Representative is a design professional of the firm or has a specific approval of the Owner.

- 2-1-32** The professional services performed during the Field component comprise on-site project observations during construction by the Designer and the Designer's consultants as well as substantial completion inspections to guard against nonconformity of the work with the Contract Documents and to observe and report on compliance with construction schedules. The Designer and its consultants shall make on-site project observations as needed during the critical phases of construction and shall make requisite substantial completion inspections. The Designer shall monitor the Contractor's development of Record Documents. The Designer shall not be responsible for construction means, methods, techniques, sequence of procedures, or for the safety precautions and programs in connection with the work. The Designer may disapprove or reject

work as failing to conform to the Contract Documents.

2-1-33 Project observations shall be done by a principal of the Designer's firm and/or of each consultant firm, or a qualified employee of each firm at a minimum of twice a month. For all visits to the site, a written project observation report shall be submitted to the Owner. The Designer with appropriate consultants shall attend all progress meetings and the Designer shall submit promptly a written report to the Owner containing a summary of the substances of each meeting.

2-1-34 The Designer shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by both the Owner and Contractor. The Designer shall make decisions on all claims of the Owner or Contractor relating to the execution and progress of the work and on all other matters or questions related thereto. The Designer shall make recommendations in matters relating to artistic effect that are consistent with the intent of the Contract Documents with the Owner's decision being final.

2-1-35 The Designer will not issue any oral or written orders for changes to the Contract Documents until approved in writing by the Owner, except as provided in the AIA General Conditions as modified by the Owner, or as modified by this Agreement.

2-1-36 Upon request by the Contractor and submission of a list of incomplete items of work by the Contractor, the Designer and its consultants, with a representative of the Owner present, shall make a Substantial Completion inspection and augment the Contractor's list of items necessary to complete the project in accordance with the Contract Documents. Prior to certifying Substantial Completion, the Designer shall verify that all items required by the Project Manual are substantially complete. When the Work is certified substantially complete, the Designer will prepare and issue a Certificate of Substantial Completion.

Close-Out Phase

2-1-37 Upon Substantial Completion of the Work, the Close-out Phase shall begin. When the Work is complete and a request is made by the Contractor, the Designer and its consultants, with a representative of the Owner present, shall conduct a Final Completion inspection to verify, to the best of the Designer's knowledge, information and belief, to the Owner that the completion of the project is in compliance with the Contract Documents. Prior to issuing a Final Certificate for Payment the Designer shall verify that all items required by the Project Manual are complete. When the Work is certified

complete, the Designer shall issue a Final Certificate for Payment.

2-1-38 The Designer shall prepare and submit Record Documents to the Owner. These documents shall be drawings on reproducible mylar transparencies suitable for reproduction, and a corrected (marked-up) Project Manual reflecting changes caused by addenda, modifications, and observed changes as recorded by the Contractor. All matters of additional services and reimbursable expenses shall be completed and billed. The Designer shall prepare and submit to the Owner a completed SBC-25 form with the Record Documents and final request for payment to complete the Close Out Phase.

2-1-39 During the one year period after the date of Substantial Completion of the Work, the Designer shall work with a representative of the Owner in securing remedy of any of the Work that is found to be not in accordance with the requirements of the Contract Documents, and shall make a one year inspection of the project and report observed non-conforming work to the Contractor for correction and to the Owner. The Designer will monitor the Contractor's work to completion.

Professional Consulting Services

2-1-40 All documents and services required under this Agreement shall be prepared or performed by or under the direct supervision of professionals licensed in the State of Tennessee in each discipline required by the scope of services. These licensed professionals in the disciplines of Architecture, Civil Engineering, Structural Engineering, Mechanical Engineering, and Electrical Engineering, shall be members of the Designer's firm, or of the consulting firms listed in this Agreement, and shall affix their seals in accordance with TCA § 62-2-102, et. seq. Professionals in required disciplines not represented in the Designers firm shall be employed by the Designer subject to the objection of and without additional cost to the Owner.

2-1-41 The Designer shall enter into agreements with its Consultants binding them to the Terms and Conditions of this Agreement.

2-2 Additional Services

The services described below in this paragraph are examples of those not included in Basic Services **2.1** and shall be negotiated as a lump sum or paid in accordance with **Article 1**. No extra compensation shall be payable to the Designer unless prior to the time such additional services are rendered, the State Architect or the State Architect's designee shall have approved by written agreement the payment to the Designer for those additional services.

2-2-1 Making material revisions in Drawings, specifications, and other documents when such revisions are:

- (a) Inconsistent with written approvals or documented instructions previously given by the Owner, for the previously approved phase or concept and which are made necessary by significant adjustments in the Owner's program, schedule or Project budget; or significant changes in the Project including, but not limited to size, quality, or complexity and which are not caused by Designer error or omission.
- (b) Required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

2-2-2 Providing services concerning replacement of Work damaged by fire or other cause during construction.

2-2-3 Providing services made necessary by default of the Contractor, or made necessary by major defects in the Work of the Contractor, which defects require significant investigation or redesign.

2-2-4 Providing services in connection with a non-state government public hearing, or legal proceeding except where the Designer is party thereto.

2-2-5 Providing analysis of the Owner's needs and programming the requirements of the Project above that required in 2-1-8.

2-2-6 Assisting the Owner in preparation of application to the U.S. Government and other granting agencies for construction, interest subsidy, and other forms of grants.

2-2-7 Providing planning surveys, site evaluations or comparative studies of prospective sites above that required in paragraph 2-1-10.

2-2-8 Providing special surveys or environmental studies required for approvals of governmental authorities, or others having jurisdiction over the project, which are not considered a part of basic services.

2-2-9 Providing measured drawings of existing facilities where reasonable documentation does not exist.

2-2-10 Providing complete Design Development Phase or Construction Document Phase documents in excess of those required in basic services.

2-2-11 Providing special services to verify the accuracy of drawings or other information furnished by the Owner.

2-2-12 Providing interior design and other similar services limited to and required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

2-2-13 Providing services of special consultants, other than those identified in Basic Services, when such services are reasonably required by the scope of the Project.

2-2-14 Providing detailed models or colored renderings over that required in basic services.

2-2-15 If more extensive representation at the site than is required by the Owner in the Construction Phase 2-1-29 through 2-1-36, the Designer shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

2-2-16 If the Contractor significantly exceeds the contract time as modified, or the time allowed after Substantial Completion to complete the remaining work items, which causes the Designer and its consultants to make repeated inspections, such services shall be considered as additional services.

2-2-17 If excessive evaluations or on-site project visits are required of the Designer after final completion of the work due to improper building operation by the Owner, non-conforming work, or non-responsiveness by the Contractor to make required corrections, such services shall be considered as additional services.

2-2-18 Providing Record Documents on special media.

2-2-19 Payment by Owner for Additional Services is not a waiver by Owner of later objections and any payment by Owner for Additional Services is under reservation of rights to later object and recover any money paid hereunder.

Article 3

THE OWNER'S RESPONSIBILITY

3-1 The Owner shall provide adequate information regarding requirements for the project, including a written program which shall set forth the Owner's objectives, schedule, time and budget constraints and other criteria, including space requirements and relationships, in sufficient detail to allow the Designer to carry out the design.

3-2 At the time of execution of this Agreement the Owner shall furnish the Designer the State of Tennessee's Designer's manual that is consistent with this Agreement containing the contract requirements of the Owner and the provisions and requirements of the State of Tennessee.

3-3 Under this Agreement, the Owner shall designate a representative authorized to act in its behalf, who shall render decisions in a timely manner to avoid unreasonable delay in the orderly and sequential progress of the Designer's services.

3-4 The Owner may make project observations, may consult with the Designer on issues, and may assist the Designer in coordinating the progress of the work. The Owner will not give direct orders to the Contractors or to the Contractor's personnel. The Owner shall have no obligation or responsibility as to safety or enforcement of safety rules.

3-5 The Owner shall furnish information required of it under this Agreement as expeditiously as necessary for the orderly progress of the work.

3-6 Prompt written notice shall be given by the Owner to the Designer if the authorized representative of the Owner actually becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. However, failure to do so will not limit the responsibility of the Designer to detect and address any fault or defect.

Article 4

MAXIMUM ALLOWABLE CONSTRUCTION COST

4-1 For the purposes of this Agreement and the calculation of fees, The Maximum Allowable Construction Cost, confirmed or adjusted by written agreement at the completion of the Design Development Phase of the project, is defined as the total sum approved by the Owner at the completion of the Design Development Phase for construction purposes including the cost of all work designed and specified by the Designer, including that covered by contingencies, but not including professional fees, or any charges incidental to the project.

Article 5

DIRECT PERSONNEL EXPENSE

5-1 If applicable to this Agreement, Direct Personnel Expense includes that of employees engaged on the project by the Designer, including architects, engineers, designers, drafting technicians, specification writers, field administrators and clerical staff in consultation, research, design, production of drawings, specifications, and other documents pertaining to the project, observations and inspections of construction of the project. Hourly rates shall be subject to prior written approval by the Owner.

5-2 Direct Personnel Expense includes cost of salaries and of mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions, and similar benefits and limited to no more than thirty (30) percent of base salary cost.

Article 6

REIMBURSABLE EXPENSES

6-1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and are limited to expenses expressly allowed in this Article and actually incurred by the Designer and the Designer's consultants while performing such services.

6-1-1 Travel expenses, including mileage, meals and lodging, that are incurred in connection with the project for travel in excess of a fifty (50) mile radius of the Designer's or Designer's Consultant's principal place of business, will be considered as reimbursable expenses for the travel that is over and above the travel expense incurred within the fifty (50) mile radius. Travel expenses in connection with preauthorized out-of-town or out-of-state expenses will be considered as reimbursable expenses. Reimbursement for allowable travel, meals, and/or lodging shall be in the amount of actual costs, subject to maximum amounts and limitations specified in the "State Comprehensive Travel Regulations" as they are amended from time to time.

6-1-2 If the Owner elects to have the Designer pay for advertisements for bids, such costs will be considered as reimbursable expenses.

6-1-3 Reimbursable expenses for items described in subparagraph **2.1.7** shall be at actual cost to the Designer.

Article 7

PAYMENTS TO THE DESIGNER FOR BASIC SERVICES

7-1 As a guide for invoicing, payments of the Basic Rate to the Designer shall not exceed the following percentages for the phases described below:

1. Program Phase	3%
2. Schematic Phase	12%
3. Design Development Phase	25%
4. Construction Document Phase	30%
5. Bidding and Negotiation Phase	3%
6. Construction Phase	23%
7. Close-Out Phase	4%

7-2 Fee for Program Phase shall be invoiced and payable upon completion and approval by the Owner of this phase of the Designer's work unless otherwise agreed to by the State Architect, or the State Architect's designee, in writing.

7-3 Fee for Schematic Design, Design Development and Construction Document Phases shall normally be made in two (2) approximately equal payments in proportion to the progress of the Designer's work unless otherwise agreed to by the State Architect, or the State

Architect's designee, in writing. The final payment for the Construction Document Phase fee will be invoiced and payable upon furnishing to, and approval by, the Owner of final Construction Documents and any other information required for receiving bids on the project.

7-4 Fee for the Bidding and Negotiation Phase will be invoiced and payable upon execution of the construction contract and submission of SBC-25 as required in subparagraph 2-1-28 of this Agreement. Alternatively, payment for the Bidding and Negotiation Phase will become due and payable should the Owner choose not to award a contract within 45 days following the receipt of a bona fide bid within the MACC.

7-5 Fee of the Construction Phase shall be made monthly in proportion to the gross progress payments to the Contractor. Final payment for the Construction Phase fee will be invoiced and payable upon Substantial Completion of the project acceptable to the Owner.

7-6 Fee of the Close Out Phase will be invoiced and payable upon completion of the Final Certificate for Payment, submission of Record Documents and a corrected (marked up) Project Manual, completion and billing for all matters of additional services and reimbursable expenses, and submission of a completed SBC-25 form.

7-7 In the event that the lowest bona fide bids received exceed the Maximum Allowable Construction Cost, the Designer agrees to revise the drawings, if requested by the Owner, in order to bring the construction cost within the Maximum Allowable Cost at no additional expense to the Owner. The Owner in this event agrees to cooperate with the Designer and permit reasonable and necessary reductions in the scope of the project.

7-8 No deduction shall be made from the Designer's compensation due to penalties, liquidated damages, or other sums withheld from the contractors through no fault of the Designer.

7-9 The Designer shall complete and sign an "Authorization Agreement for Automatic Deposits" (ACH Credits) Form prior to commencing work or invoicing the Owner. This form shall be provided by the Owner. All payments to the Designer under this Agreement shall be made through the Owner's automated clearing house wire transfer system.

7-10 If the project is suspended in writing by the Owner for more than 90 consecutive days during the Design Development or Construction Documents Phases, the Designer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Designer's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Designer's services based on documented additional costs incurred, in accordance with the Terms and Conditions of this Agreement.

7-11 The Owner reserves the right to deduct from amounts which are or shall be invoiced and payable to the Designer under this or any contract between the State and the

Designer any amounts which are or shall become due and payable to the Owner by the Designer.

7-12 This Agreement is subject to the appropriation by the General Assembly and availability of funds. In the event the General Assembly fails to appropriate funds, reduces an appropriation, or the funds are otherwise unavailable, then this Agreement shall terminate in accordance with Article 9, paragraph 9-2.

7-13 Payment to the Designer shall be made within 45 days after being properly invoiced and payable in accordance with TCA Title 12, Chapter 4, Part 7.

Article 8

DESIGNER'S ACCOUNTING RECORDS

8-1 The Designer shall maintain documentation for all charges against the State under this Agreement. The books, records and documents of the Designer, insofar as they relate to work performed or monies received under this Agreement, shall be maintained for a period of three full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State agency or the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be maintained in accordance with generally accepted accounting principles.

Article 9

TERMINATION OF AGREEMENT

9-1 TERMINATION OF AGREEMENT FOR CAUSE

9-1-1a If, through any cause, the Designer shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the Designer shall violate any of the covenants, agreements, or stipulations of the Agreement, the Owner shall thereupon have the right to terminate this Agreement by giving thirty (30) days written notice to the Designer of such termination and specifying the effective date of termination. The Owner may include in such notice of termination a request for corrective action or other restoration of performance, normally within 15 days, and stipulating that correction by the Designer, which is satisfactory to the Owner, may lead the Owner to rescind the termination. At the option of the Owner, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Designer shall become Owner's property, and the Designer shall be entitled to receive just and equitable

compensation for any satisfactory work completed on such documents and other materials.

9-1-1b If the Owner fails to make payment to the Designer in accordance with paragraph 7-13 of this Agreement, the Designer may, upon ten (10) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Designer within ten (10) days of the date of the notice, the suspension shall take effect without further notice. In the event of a proper suspension of services, the Designer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Failure of the Owner to make payments to the Designer in accordance with this Agreement shall be considered substantial nonperformance and cause for termination. In the event of a good faith dispute between the Owner and Designer regarding whether, and to what extent, an amount is properly due, this subsection (b) shall not be applicable.

9-1-2 Notwithstanding the above, the Designer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Agreement by the Designer, and the Owner may withhold any reasonable payments to the Designer for the purpose of setoff until such time as the exact amount of damages due the Owner from the Designer is determined.

9-2 TERMINATION FOR CONVENIENCE OF OWNER

9-2-1 The Owner may terminate this Agreement at any time by a notice in writing from the Owner to the Designer. In that event, all finished or unfinished documents and other materials as described in Paragraph 9-1-1 above shall, at the option of the Owner, become its property. If the Agreement is terminated by the Owner as provided herein, the Designer will be paid for the services in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Designer covered by this Agreement.

Article 10 GRATUITIES AND COMPENSATION FROM CONTRACTORS

10-1 The Designer, who is a party to this Agreement, hereby agrees that it or any of its employees or consultants shall not offer or agree to offer gifts or gratuities to any employee of the State of Tennessee. Evidence of an offer of a gift or gratuity may be cause for termination of this Agreement.

10-2 The Designer, who is a party to this Agreement, agrees that it or any of its employees or consultants shall not accept gratuities or receive any compensation from the Contractor, subcontractors, or material suppliers involved in the construction of the project. The Designer shall notify each of their employees and all consultants of Designer's commitments under this provision of this Agreement. This provision expressly precludes any compensation to the Designer, any employee or consultant of the Designer, by the Contractor, subcontractors, or material suppliers involved in the construction of the project for preparation of detail drawings, shop drawings, or checking shop drawings, or any other service for work performed by the Designer under this Agreement without prior written approval of the State Architect or the State Architect's designee.

10-3 The Designer acknowledges its familiarity and agrees to make its employees and subcontractors familiar with the requirements of Chapter 529 of the Public Acts of 1995, known as the "Lobbying Reform Act of 1995" and any amendments thereto.

Article 11 NON-DISCRIMINATION

11-1 Except to the extent permitted by Federal laws and regulations for a bona fide occupational qualification, the Designer agrees as follows:

11-1-1 No person on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement, or in the employment practices of the Designer. The Designer shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

11-1-2 The Designer will, in all solicitations, for employees or job orders for employees placed with any employment agency, union, or other firm or agency, state that all qualified applicants will receive consideration for employment without regard to race, disability, creed, color, national origin, sex, or age. The words "equal opportunity employer" in advertisements shall constitute compliance with this section.

11-1-3 The Designer will include the provisions of the foregoing paragraphs 1, 2, and 3 in every subcontract or purchase order for the goods or services which are subject matter of this contract. In the event of noncompliance by the

Designer with any of the nondiscrimination provisions of this Agreement, the Owner shall have the right, at its option, to cancel this Agreement in whole or in part. If this Agreement is canceled after part performance, the Owner shall be obligated to pay the fair market value or this Agreement price, whichever is lower, for goods or services which have been received and accepted.

Article 12 SUCCESSORS AND ASSIGNS

12-1 With the written consent of the Owner, the Designer may assign a portion of its financial interest to a recognized financial institution for underwriting operations covered by this Agreement. The Owner and the Designer each binds itself, its partners, successors, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, assigns, and such other legal representatives of such other party in respect to all covenants of this Agreement. Neither the Owner nor the Designer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

Article 13 EXTENT OF AGREEMENT

13-1 This Agreement represents the entire and integrated Agreement between the Owner and Designer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Designer. The Owner is not bound by this Agreement until it is approved by the appropriate State officials as indicated on the signature page of this Agreement. This Agreement may be amended only by obtaining the signature of officials hereto or as may be allowed by State Building Commission Policy & Procedures.

Article 14 OWNERSHIP OF DOCUMENTS

14-1 Upon completion or termination of the Design Contract, the Design and the Contract Documents as instruments of professional services shall be the property of the State of Tennessee, and may be used again by the Designer only for the benefit of the State and on authority of the State Building Commission. Originals of these documents may remain in the files of the Designer.

Article 15 PROFESSIONAL LIABILITY INSURANCE

15-1 The Designer shall furnish to the Owner a certificate of insurance, in a form acceptable to the Owner, that the Designer has Professional Liability Insurance Coverage as required by this Agreement. The amount of coverage shall be a minimum amount of One Hundred Thousand (\$100,000) Dollars. In lieu of the above requirement, the Designer may, in a form acceptable to the Owner, provide proof of financial responsibility. The certificate of insurance required by this paragraph shall contain a provision standard in the industry requiring notice to Owner of cancellation.

15-2 Additional Professional Liability Insurance Coverage may be required and will be as described in Part C of this Agreement.

Article 16 GENERAL TERMS

16-1 The Designer, being an "independent contractor", agrees to carry adequate public liability and other appropriate forms of insurance.

16-2 The Designer agrees to pay all taxes incurred in the performance of this Agreement.

16-3 The Owner shall have no liability except as specifically provided in this Agreement.

16-4 The Designer shall comply with all applicable Federal and State laws and regulations in the performance of this Agreement.

16-5 This Agreement shall be governed by laws of the State of Tennessee.

End of the Terms and Conditions

Attachment 2
to
BY-LAWS, POLICY, AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

FORM SBC-6S

Standard Form of
Supplement to Basic Agreement
Between
Owner
and
Designer
Revised February 1999



Standard Form of Supplement to an Agreement between Owner and Designer

Part A:

A.1 This SUPPLEMENT AGREEMENT is made this _____ day of _____ in the year _____

by and between the **State of Tennessee**

DEPARTMENT OF FINANCE AND ADMINISTRATION on the behalf of the

<<State Agency>>

hereinafter called the **Owner**, and

<<Designer Firm>>

<<Designer Address>>

<<City>>, <<State>> <<Postal Code>>

hereinafter called the **Designer**.

A.2 WITNESSETH, whereas both parties have heretofore executed an Agreement regarding the following project:

Project Title: <<Project Title from SBC-1>>

Institution: <<Institution>>

Location: <<Location>>

SBC Number: <<SBC Number>>

A.3 WITNESSETH, said Agreement is dated:

<<Date of Original Contract>>

A.4 WITNESSETH, said Agreement has been previously modified by Supplements dated:

<<Prior Supplement Dates>>

A.5 WITNESSETH, said Agreement, as modified by the Supplements identified above, provides for the Designer to perform Design Services for the project as described in paragraphs

Paragraphs 2-1-<<Paragraph No.>> Through 2-1-<<Paragraph No.>>

of the Terms and Conditions, and provides for a **Maximum Allowable Construction Cost** not to exceed

<<MACC>> AND NO/100 TH DOLLARS

\$<<MACC AMOUNT>>

unless adjusted by the Owner by written Supplemental Agreement.

A.6 And WHEREAS the parties desire to amend the Agreement.

NOW, THEREFORE, the parties agree as follows.

Part B:

B.1 Except as herein modified or changed in any respect, all provisions contained in the Agreement prior to this modification, including the Terms and Conditions, are hereby renewed and confirmed.

B.2 Scope and budget of Project:

B.2.1 The **Scope** of the project shall be:

<<Scope>>

B.2.2 The **Maximum Allowable Construction Cost** shall be:

<<MACC>>AND NO/100TH DOLLARS

\$<<MACC AMOUNT>>

B.3 **Services and compensation:**

B.3.1 Design Services shall include those described in the following paragraphs of the Terms and Conditions:

Paragraphs 2-1-<<Paragraph No.>> Through 2-1-<<Paragraph No.>>

B.3.2 Payment made to the Designer by the Owner under the Agreement prior this supplement shall constitute payment toward the total lump sum fee or the maximum fee due under the Agreement after this Supplement.

B.3.3 The compensation to the Designer, in accordance with the Terms and Conditions, shall be

<<Compensation>>AND NO/100TH DOLLARS

\$<<Compensation Amount>>

Part C:

C.1 **Professional Liability Insurance** coverage, as set forth in the Terms and Conditions, is required as follows:

<<Insurance>>AND NO/100TH DOLLARS MINIMUM

\$<<Insurance Amount>> Minimum

Part D:

D.1 The Designer agrees to a schedule as follows:

☒

To complete services described in paragraphs 2-1-1 through 2-1-21 of this Agreement within

<<DDP>>

calendar days from the date of Notice to Proceed:

AND

☒

To complete services described in paragraphs 2-1-22 through 2-1-26 of this Agreement within

an additional

<<CDP>>

calendar days from approval of the work performed in paragraphs 2-1-1 through 2-1-21 of the Terms and Conditions

Reviewed and approved:

By: _____ Date: _____

State Architect or designee

In witness whereof, the Owner and the Designer have executed this Agreement.

Designer:

<<Designer Firm>>

Person(s) signing for Designer must be named as Principal above

Comptroller: *(for Compliance with Policy & Statute)*

if over \$50K

By: _____

By: _____

Title: _____

Date: _____

Date: _____

Owner:

State of Tennessee

As required by State Building Commission policy and requirements of the Contracting Agency

Department of Finance & Administration

M. D. Goetz, Jr., Commissioner

Attorney General: *(for Form and Legality)*

if over \$100K

By: _____

By: _____

Date: _____

Date: _____

Attachment 3
to
BY-LAWS, POLICY, AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

Standard Form of
State / Local Agreement
for Construction of a
National Guard Armory
Revised January 1989

TENNESSEE
STATE BUILDING COMMISSION
Standard Form of State/Local Agreement
for Construction of a
National Guard Armory

WHEREAS, The State of Tennessee, hereinafter referred to as the "State", represented by the Adjutant General pursuant to Tennessee Code Annotated 58-1-506, and the United States of America, hereinafter referred to as the "Federal Government", have determined that the construction of an armory at _____, Tennessee, hereinafter referred to as the "Armory", is necessary; and,

WHEREAS, the Federal Government has agreed to provide funding for the construction of the Armory as its contribution pursuant to Chapter 133, Title 10, U.S. Code, Facilities for Reserve Components, as implemented by Defense Directive 1225.7.

NOW THEREFORE, the State, and _____, Tennessee, hereinafter referred to as the "Local Government", do mutually promise and agree with each other to provide land, utilities, and funding as defined under the conditions hereinafter provided.

ARTICLE I
REAL PROPERTY ACQUISITION

The Local Government will acquire and deed in fee simple to the State a site on which the Armory will be constructed. Said site to meet the minimum standards, attached hereto, and approval of the State and the National Guard Bureau. In addition, the Local Government will provide property title insurance and site survey documents.

ARTICLE II
UTILITY SERVICE

The Local Government will provide adequate utilities to the property line of the project, including but not limited to sewer, water, electrical, and gas to accommodate the needs of the project.

ARTICLE III
LOCAL CONTRIBUTION

The Local Government will contribute a lump sum amount of _____ as its share in the cost of construction of the Armory, in accordance with established policy for a _____ armory, and will provide documentation relative to the legal

authority to bind Local Government to this monetary commitment prior to execution of this Agreement.

ARTICLE IV
FAILURE TO MAKE PAYMENT

Upon failure to the Local Government to make payment as provided herein, the Department may, at its option, withhold from any funds allocable to the Local Government by the State, funds sufficient to cover the Local Government's agreed contribution to the construction cost of the new armory.

ARTICLE V
PAYMENT OF SHARE

The Local Government share will be paid to the State, upon demand of the State, and immediately subsequent to the execution of a bona fide contract with the successful bidder.

Agreed to on behalf of the parties by the following:

CITY OF _____

ACCEPTED BY STATE OF TENNESSEE

BY: _____
MAYOR

BY: _____
THE ADJUTANT GENERAL

BY: _____
COUNTY JUDGE

APPROVED AS TO FORM AND LEGALITY:

BY: _____
ATTORNEY GENERAL

Executed on this _____ day of _____, 199_____.

Attachment 4
to
BY-LAWS, POLICY, AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

Tennessee Wildlife Resource Agency

Disposal of Interest in Land
By Leasing of Surplus
Real Estate Property
For Crop Leases

January 1991

TENNESSEE
STATE BUILDING COMMISSION
Tennessee Wildlife Resources Agency
Procedures for Crop Lease

1. AN INVITATION FOR BIDS will be prepared specifying the location of the land to be crop leased, the terms and requirements of the lease and the bid opening date, place, and time. The invitation for bids will be mailed to all known prospective bidders.
2. ADVERTISEMENT
 - A. Land without legal access does not have to be advertised.
 - B. All other land to be crop leased will be advertised at least two (2) times in a two-week period in a local publication.
 - (1) The terms, conditions, bid opening date and person to contact for further information is to appear in the advertisement.
 - (2) Bid opening to be no sooner than ten (10) days from the last advertisement excluding Saturdays, Sundays and holidays.
3. INSURANCE must be general liability with minimum limits of three hundred thousand dollars (\$300,000) per claimant and one million dollars (\$1,000,000) per occurrence for personal injury and property damage occasioned by the negligence or intentional acts of the lessee, its agents, servants or employees.
 - A. Less than 75 acres, general liability insurance is not required, but desirable.
 - B. More than 75 acres, general liability insurance is required. If after advertisement on 75 or more acres no bids are received, the insurance requirement may be dropped.
4. IF NO BIDS ARE RECEIVED, Tennessee Wildlife Resources Agency has the right to negotiate under the same lease terms and conditions. If terms and conditions change, a new Invitation for Bids and readvertisement must be done.
5. WRITTEN RECORDS will be maintained regarding the evaluation and award activities.
6. FILES will be maintained in a manner that allows an accurate audit of the program.

7. WRITTEN RECORDS will be maintained at the Wildlife Management Area and in the TWRA central office, showing a minimum of:
 - A. Advertising affidavit of publication
 - B. Successful bidder
 - C. Amounts of various bids in like units (percentage of crop/dollars)
 - D. How much crop/ dollars received at harvest
 - E. Record of any personal injury or property damage incidents
 - F. A lease property list showing all leases broken down into all categories
8. MULTI-YEAR LEASES not to exceed five (5) years are acceptable.
9. LEASES are to be signed and notarized by lessee and Executive Director of the Tennessee Wildlife Resources Agency.

Attachment 5
to
BY-LAWS, POLICY, AND PROCEDURE
of the
STATE BUILDING COMMISSION
of
TENNESSEE

FORMS SBC-7 and SBC-8
Designer Evaluation Forms
April 1993

Evaluation as to the project:

Design Phase

Rating Scale:	Purpose:
③ Above Standard	Upon design & bid completion for a State Building Commission project of this type, this office is required to provide an evaluation of Designer performance during design & bid using this SBC-7 form. This evaluation is for the Designer to realize the level of standard expected by the SBC. The evaluation is in 10 parts; with each part given a rating of Above Standard, Standard, or Below Standard. Comments explaining each rating are provided, as well.
② Standard	
① Below Standard	
④ Not Applicable	

EVALUATION

①①②③	Program Phase; facilitated defining of project time, funding, site, scope, and function.	
①①②③	Schematic Design Phase; requisite site analysis, design concepts, and schematic drawings.	
①①②③	Design Development Phase; production of fully developed design concept and cost estimate.	
①①②③	Construction Documents Phase; production of complete and accurate bidding documents.	
①①②③	Bid Phase; performance in soliciting bids, req'd addenda, receiving bids, and pursuing award.	
①①②③	Accuracy and detail of construction cost estimate; estimate was in alignment with bids received.	
①①②③	Adherence to the overall design & bid schedule; no inordinate delays brought about.	
①①②③	Adherence to the overall project program objectives; kept within the project bounds.	
①①②③	Supervision of Consultants' performance; ensured their prescribed duties were met.	
①①②③	Relationship with Capital Projects Management, user agency, and regulatory officials.	

Evaluator:

Signature _____

Name _____

Date _____

Dir. of
Design

:

Assist. _____

Comm _____

:

Designer:

Signature _____

Name _____

Date _____

Evaluation as to the project:

Construction Phase

Rating Scale:

- ③ Above Standard
 ② Standard
 ① Below Standard
 ④ Not Applicable

Purpose:

Upon construction completion for a State Building Commission project of this type, this office is required to provide an evaluation of Designer performance during construction & bid using this SBC-8 form. This evaluation is for the Designer to realize the level of standard expected by the SBC. The evaluation is in 10 parts; with each part given a rating of Above Standard, Standard, or Below Standard. Comments explaining each rating are provided, as well.

EVALUATION

③①②③	Project leadership; provided sound and timely advisement, consultation, and interpretations.	
③①②③	Observed the Work at appropriate stages, and attended progress meetings regularly.	
③①②③	Assured that the Work was performed as required; guarded against defects and deficiencies.	
③①②③	Supervision of Consultants' performance; ensured their prescribed duties were met.	
③①②③	Completeness and accuracy of Contract Documents; no inordinate change orders needed.	
③①②③	Completeness, accuracy, and timeliness of administrative documentation.	
③①②③	Relationship with Contractor; endeavored to maintain a partnered contractual position.	
③①②③	Relationship with Capital Projects Management, State agencies, and regulatory officials.	
③①②③	Substantial Completion; timely and thorough inspection and documentation.	
③①②③	Final Completion and Close-out; timely and thorough inspection and documentation.	

Evaluator:

Signature _____
 Name _____
 Date _____

Dir.of
 Constr: _____
 Assist. _____
 Comm _____
 : _____

Designer:

Signature _____
 Name _____
 Date _____

Attachment 6

to

BY-LAWS, POLICY, AND PROCEDURE

of the

STATE BUILDING COMMISSION

of

TENNESSEE

General Acquisition of Disposal
Rules and Regulations

February 2003

GENERAL ACQUISITION AND DISPOSAL RULES AND REGULATIONS

Department of Finance and Administration
Effective July 1, 1996

Fee Structure for Acquisitions and Disposals

\$0 - \$10,000	Minimum charge	\$ 500
\$10,001 - \$999,999	5% of transaction amount	
\$1,000,000 or greater	Maximum	\$50,000

Transactions that will require payment of a fee are acquisitions and disposals in fee simple, easements, land leases and some licenses. All fees will be payable at closing or at the execution of the instrument except leases which may be collected as each annual payment becomes due.

Transfers of jurisdictions, inter-agency agreements and rights of entry will be processed at no cost unless federal program requirements conflict with that policy.

The fee on an exchange of property will be based on the value of the property to be exchanged or the higher of the values, if different. The fee on gift property to the State will be based on the minimum charge.

Where disposals of State property are anticipated with outside parties requesting the disposal, the payment of an estimated fee or estimated cost of any required appraisal, whichever is greater, will be collected at the beginning of the transaction to insure follow through.

The Executive Subcommittee shall receive annual recommendations from the Commissioner of Finance and Administration regarding situations where waiving the fee seems appropriate. The Executive Subcommittee will then determine which fees could be waived. Because of the public policy or interest served, fees may be waived when:

1. The transaction results from action by the Legislature and no funds have been appropriated to cover costs associated with the transaction.
2. An outside party to primarily benefit the State initiated the transaction and the agency has no revenues other than appropriations.
3. A prior agreement states that consideration or costs will be waived.
4. Those transactions initiated by and benefiting a governmental entity or nonprofit group who is paying the fair market value, if any, and all out-of-pocket costs associated with the transaction and payment of the fee would not be in the interest of the program.